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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

4 v.

S2 17 Cr. 548 (PAC)

5 JOSHUA ADAM SCHULTE,

6 Defendant.

Trial

7 -----x

New York, N.Y.  
February 27, 2020  
10:00 a.m.

9 Before:

10 HON. PAUL A. CROTTY,

District Judge  
-and a jury-

11 APPEARANCES

12 GEOFFREY S. BERMAN

13 United States Attorney for the  
Southern District of New York

14 BY: MATTHEW J. LAROCHE

SIDHARDHA KAMARAJU

15 DAVID W. DENTON JR.

Assistant United States Attorneys

16 SABRINA P. SHROFF

17 Attorney for Defendant  
-and-

18 DAVID E. PATTON

Federal Defenders of New York, Inc.

19 BY: EDWARD S. ZAS

Assistant Federal Defender

20 -and-

21 JAMES M. BRANDEN

22 Also Present: Colleen Geier

Morgan Hurst, Paralegal Specialists

23 Achal Fernando-Peirís, Paralegal

John Lee, Litigation Support

24 Daniel Hartenstine

Matthew Mullery, CISOs, Department of Justice

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1 (Trial resumed; jury not present)

2 THE COURT: We all set?

3 MS. SHROFF: We think --

4 MR. LAROCHE: Yes, your Honor. The government is  
5 ready.

6 MS. SHROFF: Your Honor, should we inform the Court  
7 what we're planning to do or do you want to just start?

8 THE COURT: The jury's been waiting now 20 minutes, so  
9 I'd like to call the jury in and get started. You'll do  
10 whatever you think is appropriate.

11 David, call in the jury.

12 MS. SHROFF: Your Honor, you've ruled the memo  
13 admitted into evidence, right?

14 THE COURT: Yes.

15 MS. SHROFF: We're going to move formally to introduce  
16 it, and have Mr. Fernando-Peirís read it to the jury.

17 THE COURT: All right.

18 MS. SHROFF: I am just letting you know.

19 THE COURT: Thank you.

20 MS. SHROFF: You're welcome.

21 (Continued on next page)

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1 (Jury present)

2 THE COURT: Ms. Shroff.

3 MS. SHROFF: Thank you, your Honor. The defense calls  
4 Achal Fernando-Peiriris.

5 THE COURT: Good morning. I understand he's not going  
6 to testify.

7 MS. SHROFF: He's not.

8 THE COURT: He's just going to read?

9 MS. SHROFF: Yes.

10 THE COURT: He doesn't have to be sworn then?

11 MS. SHROFF: I think it's best to swear him in.

12 Do you have the memo?

13 THE WITNESS: It's going to be on the screen, right?

14 THE DEPUTY CLERK: Please state your name for the  
15 record.

16 THE WITNESS: Achal Fernando-Peiriris.

17 THE COURT: Please sit down. You all set? Okay.

18 MS. SHROFF: The defense moves Exhibit L into  
19 evidence.

20 THE COURT: That's received in evidence.

21 (Defendant's Exhibit L received in evidence)

22 MS. SHROFF: May we publish it to the jury?

23 THE COURT: Yes, you may.

24 MS. SHROFF: Thank you.

25 ACHAL FERNANDO-PEIRIS,

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Fernando-Peirís - Direct

1 called as a witness by the Defendant,

2 having been duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MS. SHROFF:

5 Q. Could you read for me from the beginning and stop, when I  
6 ask you to please, Achal.

7 A. Yes.

8 Q. Can you start with "memorandum for."

9 A. "Memorandum For: Director, Office of Security. Via:  
10 Chief, Special Activities Staff, Personnel Security Group,  
11 Office of Security. From: Deputy Assistant Director of CIA  
12 for Counterintelligence. Subject: Request for Administrative  
13 Leave for Michael."

14 Q. Could you continue, please.

15 A. "1. Action requested: CIMC requests enforced  
16 administrative leave for Michael, a current CCI/COG employee  
17 who is associated with the investigation into the theft and  
18 unauthorized disclosure of Center for Cyber Intelligence  
19 classified information published by WikiLeaks beginning in  
20 March 2017, also known as Vault 7."

21 Q. Keep going.

22 A. "2. Justification: Michael's lack of cooperation with  
23 inquiries into his past activities with the primary person of  
24 interest in the FBI investigation and his unexplained  
25 activities on the computer system from which the CCI data was

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Fernando-Peirís - Direct

1 stolen, known as the DevLAN, and raises significant concern  
2 about his truthfulness, trustworthiness, and willingness to  
3 cooperate with both routine OS reinvestigation processes and  
4 the criminal investigation into the theft from his office."

5 Q. Now, may I just interrupt and point out that the document  
6 says "left." Correct?

7 A. That's correct.

8 Q. Okay. And you read it as "theft," correct?

9 A. That's correct.

10 Q. Okay, keep going.

11 A. "CIMC believes curtailing his access to CIA spaces and data  
12 systems is necessary to safeguard against potential future  
13 losses of sensitive and classified information."

14 Q. Keep going, please. You can read this paragraph a little  
15 bit faster if you may.

16 A. "3. Background: Michael entered on duty in 2011 as a  
17 student trainee in the Engineering Development Group (EDG) in  
18 what is now the Center for Cyber Intelligence. He converted to  
19 staff status in 2013, and remained in EDG until moving to  
20 CCI/COG in the summer 2016. Michael is a software exploit  
21 developer with highly sensitive accesses. Michael was of  
22 interest in early 2016 to OS/Special Investigations Branch  
23 (SIB) in connection with an investigation involving two other  
24 CCI/EDG employees, Joshua Schulte and Amol, who reportedly had  
25 a physical altercation within EDG spaces. Schulte alleged that

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1 Amol had threatened his life, and Michael was interviewed as an  
2 informant. Michael reportedly also had a physical altercation  
3 with Schulte in the workplace and SIB interviewed him and an  
4 attempt to gain details."

5 Q. Let me stop you there. Is "and an" also correct in your  
6 reading or is it "in an attempt"?

7 A. In an attempt to gain details.

8 Q. Okay. Keep going.

9 A. "Michael, however, was not cooperative and refused to  
10 discuss his prior altercation with Schulte. Ultimately the SIB  
11 investigation did not substantiate the threat of physical harm  
12 to Schulte and the case was closed when Schulte resigned from  
13 CIA in November 2016. At the time, Schulte perceived himself  
14 to be victimized by Amol and was angered that CIA management  
15 did not do more to protect him. No action was taken against  
16 Michael with respect to his lack of cooperation with SIB."

17 Q. Keep going.

18 A. "4. In February 2016, OS initiated reinvestigation  
19 processing, which remains open at this time. Michael underwent  
20 two sessions of polygraph testing in May 2017 but did not clear  
21 all issues. In the wake of the theft and unauthorized  
22 disclosure of CCI's cyber toolkit on WikiLeaks, CIMC requested  
23 that OS pause all ongoing security processing involving  
24 individuals who had access to the stolen data pending further  
25 investigation of the incident by CIMC and FBI. Michael's

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1 processing was paused as a part of that effort, as he held  
2 systems administrator privileges on the DevLAN, the system from  
3 which the toolkit was stolen, and was present in EDG spaces  
4 during the timeframe of the theft."

5 Q. Okay. We can move to the next paragraph.

6 A. "Investigation. 5. In the support of the ongoing criminal  
7 investigation, CIMC conducted comprehensive reviews of all  
8 individuals who could have perpetrated the theft of the CCI  
9 data, including Michael. Several concerns about Michael have  
10 emerged in this review, including his close proximity to the  
11 theft of the data and his relationship with Joshua Schulte, the  
12 individual charged with the theft of data. Forensic analysis  
13 of Michael's activity on the DevLAN suggests that Michael may  
14 have additional knowledge of anomalies on the system at the  
15 time of the theft. Additionally, recent inquiries indicate  
16 Michael is still withholding relevant information concerning  
17 the circumstances surrounding the theft.

18 "Risk assessment. 6. Given the magnitude of the  
19 theft of the CCI toolkit and its concomitant damage to national  
20 security, CIMC views Michael's lack of cooperation as a  
21 significant and untenable risk to the security of the  
22 operations on which he now works and any new tools he deploys  
23 for CCI. Michael, whatever his reasoning, has not complied  
24 with routine inquiries by SIB and during polygraph, and has  
25 failed to provide clear and verifiable information concerning

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1 his activities in the workplace around the time of the theft.

2 Michael's behavior suggests that his knowledge of details --"

3 Q. I think you missed a word.

4 A. "Michael's behavior suggests that he has knowledge of

5 details of the theft that he has not divulged. Michael's

6 behavior suggests a lack of concern for the loss and a lack of

7 commitment to comply with the basic security agreements he

8 entered into upon hire. For these reasons, CIMC assesses that

9 Michael's continued presence in the workplace is incompatible

10 with best practices for security and insider threat

11 mitigation."

12 Q. Go ahead.

13 A. "Next steps. 7. CIMC requests that the Office of

14 Security: Immediately deactivate or block Michael's badge so

15 that he may not gain access to CIA facilities; place Michael on

16 enforced administrative leave until the investigation into his

17 knowledge of the theft of the CCI cyber toolkit is resolved.

18 "Concur." Under the first line it says: Chief,

19 special activities staff and then date. And then it says

20 approved: Director, Office of Security, and then date.

21 MS. SHROFF: Thank you. You may step down.

22 (Witness excused)

23 MS. SHROFF: Your Honor, the defense has one stip it

24 would like to read into evidence to the jury.

25 THE COURT: Yes, go ahead.



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1 MS. SHROFF: May I, your Honor?

2 THE COURT: Yes, please.

3 MS. SHROFF: It is hereby stipulated and agreed, by  
4 and among the United States of America by Geoffrey S. Berman,  
5 United States Attorney for the Southern District of New York,  
6 David W. Denton, Jr., Sidhardha Kamaraju, and Matthew Laroche,  
7 Assistant United States Attorneys, of counsel, and Joshua Adam  
8 Schulte, the defendant, by and with the consent of his counsel,  
9 Sabrina Shroff, Edward Zas, and James Branden that:

10 As of March and April 2016, the Confluence virtual  
11 machine had a user account named Confluence. The Confluence  
12 user account password of 123ABCdef. was not changed on April 16  
13 of 2016.

14 According to Government Exhibit 1207-24, no entry  
15 shows that the Confluence user account was used to log into the  
16 Confluence virtual machine in April or March or April of 2016.

17 It is further stipulated and agreed that this  
18 stipulation as Defense Exhibit O may be received in evidence as  
19 a defense exhibit at trial. The stipulation is dated today,  
20 February 27, 2020, and is signed by Mr. Laroche, and counsel  
21 for the defendant, Mr. Zas, Ms. Shroff, and Mr. Branden.

22 May I just have one minute, your Honor.

23 (Defendant's Exhibit O received in evidence)

24 THE COURT: Yes.

25 MS. SHROFF: And your Honor, without objection from

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1 the government, the defense would move into evidence prison  
2 records that would show, as Defense Exhibit P, that as of  
3 October 1st of 2016, Mr. Schulte was not -- no. I'm sorry.  
4 I'm stuck in '16. 2018, that Mr. Schulte was not in general  
5 population on October 1st, but was in fact in the SHU, which is  
6 the Segregated Housing Unit at the MCC.

7 THE COURT: What exhibit is that?

8 MS. SHROFF: P as in parrot, your Honor.

9 THE COURT: It's received in evidence.

10 (Defendant's Exhibit P received in evidence)

11 MS. SHROFF: The defense on behalf of Joshua Schulte  
12 rests, your Honor. Thank you.

13 THE COURT: I'm going to excuse the jury for a second.  
14 There is a matter I want to take up.

15 (Jury excused)

16 (Continued on next page)

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1 THE COURT: I understand that Mr. Schulte is not going  
2 to testify?

3 MS. SHROFF: That's correct, your Honor.

4 THE COURT: Mr. Schulte, I have to advise you that you  
5 have the right to testify if you wish to do so. You also have  
6 the right not to testify. It's a personal right that you have.  
7 It is a Constitutional dimension. It's not your attorneys'  
8 right; it's your right. You can waive it if you wish to do so.

9 If you testify, you can be cross-examined. If you do  
10 not testify, the jury will be advised that they can draw no  
11 adverse inference from your not testifying.

12 I want to be sure that you've talked with your  
13 attorneys and your consultants and your advisors in making your  
14 decision not to testify.

15 Is that correct?

16 THE DEFENDANT: Yes.

17 THE COURT: Okay. So it's your decision not to  
18 testify; is that correct?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Okay. Anything else the government or  
21 Ms. Shroff want me to ask?

22 MS. SHROFF: I think you go first, Mr. Denton.

23 MR. DENTON: Nothing with respect to this issue, your  
24 Honor.

25 MS. SHROFF: No.

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1 THE COURT: Thank you. Please be seated.

2 You rest now. I'm going to call the jury now so you  
3 can rest in front of the jury. Correct?

4 MS. SHROFF: We rested, your Honor. I am pretty sure  
5 we rested in front of the jury.

6 THE COURT: All right. Mr. Denton?

7 MR. DENTON: Then I think as Mr. Laroche indicated  
8 yesterday, we just have one short rebuttal witness on the memo,  
9 your Honor.

10 THE COURT: Okay. You ready to proceed on that?

11 MR. DENTON: We are.

12 THE COURT: Call the jury back.

13 MS. SHROFF: I'm just curious, do you explain to them  
14 rebuttal witnesses or you just put him on and then we cross?

15 THE COURT: I'm going to say that the government has a  
16 right to make a rebuttal. They are going to make the rebuttal,  
17 that's what this witness is going to do.

18 MS. SHROFF: Okay. Thank you.

19 THE COURT: You're welcome.

20 (Continued on next page)

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1 (Jury present)

2 THE COURT: As you heard, the government has rested,  
3 the defense has rested. The government now has an opportunity  
4 to make a short rebuttal, which they're going to do by calling  
5 a witness.

6 Mr. Denton.

7 MR. DENTON: The government calls Carter Hall.

8 THE DEPUTY CLERK: Please state your name for the  
9 record.

10 THE WITNESS: Carter Hall.

11 THE DEPUTY CLERK: Witness sworn.

12 THE COURT: Please sit down, Mr. Hall. Pull yourself  
13 right up to the microphone. Okay, Mr. Denton.

14 CARTER HALL,

15 called as a witness by the Government,

16 having been duly sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY MR. DENTON:

19 Q. Good morning, sir.

20 A. Good morning.

21 Q. Are you employed?

22 A. I am.

23 Q. Where do you work?

24 A. At the CIA.

25 Q. How long have you worked for the CIA?

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1 A. About 15 years.

2 Q. What is your current position at the CIA?

3 A. I'm currently the deputy chief of the Counterespionage  
4 Department within the Counterintelligence Mission Center.

5 Q. Is that sometimes known as CIMC?

6 A. It is.

7 Q. How long have you been in that position?

8 A. Since January of 2019.

9 Q. Generally speaking, what are your duties and  
10 responsibilities as the deputy chief of the Counterespionage  
11 Department?

12 A. It's to oversee the investigators within the department who  
13 are conducting counterintelligence and counterespionage  
14 investigations of CIA officers, contractors, and former  
15 affiliated personnel.

16 Q. Sir, I'd like to direct your attention to the summer of  
17 2019. During that time period, did you become familiar with a  
18 CIA officer known as Michael?

19 A. Yes, I did.

20 Q. During that time period, did there come a time when you  
21 participated in a decision to place Michael on administrative  
22 leave from the CIA?

23 A. Yes, I did.

24 MR. DENTON: Ms. Hurst, can we put up Defense Exhibit  
25 L, please.

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1 Q. Sir, do you recognize this?

2 A. I do.

3 Q. What is it?

4 A. It is the formal memo from CIMC to the director of the  
5 Office of Security requesting to place Michael on enforced  
6 administrative leave.

7 Q. Did you play a role in the preparation of this memo?

8 A. I did.

9 Q. What was your role?

10 A. I directed the senior investigator who drafted it to draft  
11 it, and I oversaw its finalization, and approved its forwarding  
12 to the director of security.

13 Q. We're going to talk about this, the specifics of the memo  
14 in a moment. But just generally, why did you recommend that  
15 Michael be placed on administrative leave?

16 A. He had been uncooperative through the security process,  
17 both into a couple of incidents involving the defendant, as  
18 well as his own security reinvestigation processing.

19 MR. DENTON: So, let's take a look at some parts of  
20 this memo. Starting with the first paragraph, paragraph 1, can  
21 we blow that up, Ms. Hurst.

22 Q. Sir, do you see in this paragraph where it says that  
23 "Michael is an employee who is associated with the  
24 investigation into the theft and unauthorized disclosure of  
25 Center for Cyber Intelligence classified information published

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1 by WikiLeaks beginning in March 2017, also known as Vault 7."

2 A. Yes.

3 Q. So, what agency was principally responsible for conducting  
4 the investigation into that theft and unauthorized disclosure?

5 A. The FBI.

6 Q. How was Michael associated with the investigation?

7 A. So, he was an employee in the same component in the CIA as  
8 the defendant. He was also physically present at the facility  
9 where the theft took place.

10 Q. At the time that you prepared this memo, was Michael a  
11 suspect in that theft and unauthorized disclosure?

12 A. No.

13 MR. DENTON: You can zoom out, Ms. Hurst, and look at  
14 paragraph 2, please.

15 Q. So, sir, just starting with the first sentence, do you see  
16 where it refers to "Michael's lack of cooperation with  
17 inquiries into his past activities with the primary person of  
18 interest in the FBI investigation."

19 A. I do.

20 Q. Who does the primary person of interest in the FBI  
21 investigation refer to?

22 A. Mr. Schulte.

23 Q. What of Michael's past activities with Mr. Schulte are you  
24 referring to in the memo?

25 A. So, they had had a long personal and professional



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1 relationship, and at one point had had a physical altercation  
2 in the workplace.

3 Q. Then, just continuing in that sentence, where it refers to  
4 "his unexplained activities on the computer system from which  
5 the CCI data was stolen." What unexplained activities are you  
6 referring to?

7 A. He had taken a screenshot on the day of the theft on the  
8 network in question. And he was not cooperative with  
9 investigative personnel in discussing why he had done that.

10 Q. So, when it says "unexplained activities on the computer  
11 system," did you mean to indicate that Michael might have been  
12 responsible for the theft of the CIA information?

13 MS. SHROFF: I'm going to object to the leading. He's  
14 leading the witness.

15 THE COURT: Mr. Denton, don't lead.

16 MR. DENTON: Understood, your Honor.

17 Q. When you said "his unexplained activities on the computer  
18 system," did you mean to indicate --

19 MS. SHROFF: Again, he's leading.

20 MR. DENTON: I'm asking him what he meant.

21 MS. SHROFF: Ask him what he meant.

22 THE COURT: Go ahead, Mr. Denton. The objection is  
23 overruled.

24 Q. When you referred to his unexplained activities, did you  
25 mean to indicate that Michael was responsible for the theft of

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1 the Vault 7 information?

2 MS. SHROFF: That's leading. He could ask "what did  
3 you mean."

4 THE COURT: Overruled.

5 A. No.

6 Q. So, just continuing here. The rest of that sentence  
7 indicates that the past activities with the defendant and  
8 screenshot that you described raise significant concern about  
9 Michael's truthfulness, trustworthiness, and so on.

10 Why did those two things that you described raise  
11 concern about his truthfulness or trustworthiness?

12 A. Because at the agency, in order to hold a security  
13 clearance, to retain employment, we have to be confident that  
14 you are trustworthy and you're candid about your activities and  
15 those of your co-workers, your knowledge of them.

16 The fact that he had taken the screenshot would  
17 suggest that he knew something had taken place that was --  
18 wrong. And the fact that he did not cooperate with  
19 investigators into that as well as the altercation with the  
20 defendant, led us to believe that he was not trustworthy.

21 Q. Just starting at the top of this paragraph again, just  
22 globally where you refer to his cooperation with inquiries,  
23 what inquiries are you talking about?

24 A. So, there were two separate investigations by the Office of  
25 Security into the altercation between Michael and Mr. Schulte

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1 as well as Mr. Schulte and another employee. And Michael  
2 refused to talk to our investigators about those incidents.

3 MR. DENTON: Ms. Hurst, if we can go to the second  
4 page, please, and blow up paragraph 3.

5 Q. Do you see the sentence that's about three-quarters of the  
6 way down, I'll try to draw a little blue line here, that starts  
7 "Ultimately the SIB investigation did not substantiate the  
8 threat of physical harm to Schulte."

9 A. Yes.

10 Q. Is that one of the inquiries that you were just referring  
11 to?

12 A. It is.

13 MR. DENTON: Ms. Hurst, if we can move on and go to  
14 paragraph 4, please.

15 Q. So, starting about a third of the way down, you see the  
16 sentence that reads, "In the wake of the theft and unauthorized  
17 disclosure of CCI's cyber toolkit on WikiLeaks, CIMC requested  
18 that OS pause all ongoing security processing involving  
19 individuals who had access to the stolen data pending further  
20 investigation of the incident by CIMC and FBI."

21 A. Yes.

22 Q. How did the fact that an FBI investigation was ongoing  
23 affect the security process?

24 A. So there are two separate investigative tracks, and our  
25 standard practice when there is an open criminal investigation

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1 is to pause any sort of administrative or security  
2 investigation in order to protect the integrity of the criminal  
3 investigation.

4 Q. Just looking down at the next sentence, it talks about how  
5 Michael's processing was paused as a part of that effort. What  
6 does that mean?

7 A. It meant that although his security reinvestigation was  
8 open, that we were not going to proceed with resolving that  
9 reinvestigation process or conducting any other interviews with  
10 him until the FBI investigation had run its course.

11 Q. Then the next sentence continues "as he held systems  
12 administrator privileges on the DevLAN." Do you see that?

13 A. I do.

14 Q. First of all, let me ask you, are you a technical person,  
15 sir?

16 A. I'm not.

17 Q. Do you know what system administrator privileges Michael  
18 held?

19 A. I do not.

20 Q. Do you know how they compared to the defendant's system  
21 administrator privileges?

22 A. I do not.

23 Q. Finally, it talks about how Michael was present in EDG  
24 spaces during the timeframe of the theft.

25 What does that refer to?

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1 A. He was physically present in the same CCI office facility  
2 that Mr. Schulte was.

3 MR. DENTON: So then, Ms. Hurst, if we can zoom out  
4 and if there a way to grab the bottom of page two and the top  
5 of page three, that would be perfect. Thank you.

6 Q. Now, sir, can you read the first sentence of number 5.

7 A. Yes. "In support of the ongoing criminal investigation,  
8 CIMC conducted comprehensive reviews of all individuals who  
9 could have perpetrated the theft of the CCI data, including  
10 Michael."

11 Q. Were you working in CIMC when those reviews were conducted?

12 A. I was not.

13 Q. So, just continuing on, the paragraph identifies several  
14 concerns about Michael. I'm going to ask you about each of  
15 them. The first one refers to his close proximity to the theft  
16 of the data. Do you see that?

17 A. I do.

18 Q. What does that refer to?

19 A. Again, his physical proximity in the same CCI office  
20 facility that the theft took place in.

21 Q. Then that sentence continues to refer to his relationship  
22 with Joshua Schulte, the individual charged with the theft of  
23 data. Do you see that?

24 A. Yes.

25 Q. What about his relationship with Joshua Schulte was

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1 concerning?

2 A. Again, he had had a personal and professional relationship  
3 with Mr. Schulte, they had had an altercation, and he had  
4 refused to discuss what the status of his relationship was with  
5 Mr. Schulte, what led to that altercation, and what -- you  
6 know, details of the altercation between Mr. Schulte and the  
7 other CCI employee.

8 Q. Why is that relationship relevant to whether Michael posed  
9 a security concern?

10 MS. SHROFF: Which relationship?

11 Q. Why was Michael's relationship with the defendant relevant  
12 to whether Michael posed a security concern?

13 A. Because we knew that Michael and others knew that  
14 Mr. Schulte had previously had incidents where he had been  
15 removed from privileges on the network and given them back to  
16 himself. So, we suspected that Michael had taken the  
17 screenshot because he thought that Mr. Schulte had done  
18 something similar, and the fact that he was unwilling to talk  
19 to us about it was a concern for us.

20 Q. Why was it a concern that he wasn't willing to talk about  
21 it?

22 A. Because we suspected that he knew that Mr. Schulte had done  
23 something wrong, manipulated the network in an unauthorized  
24 fashion. So as a matter of security principle, we expect our  
25 employees to discuss either with their management or security

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1 when a co-worker does something that's unauthorized.

2 Q. Moving on, the next sentence refers to "forensic analysis  
3 of Michael's activity on the DevLAN suggests that Michael may  
4 have additional knowledge of anomalies on the system at the  
5 time of the theft." You see that?

6 A. I do.

7 Q. First of all, what agency was responsible for conducting  
8 that forensic analysis?

9 A. The FBI.

10 Q. When you refer to his activity on DevLAN, what in  
11 particular are you referring to?

12 A. Specifically the screenshot he took of the network status  
13 the day of the theft.

14 Q. Then a little later on in that sentence, it refers to  
15 anomalies on the system. What anomalies are you referring to?

16 A. Again, we knew that Michael knew that Mr. Schulte had  
17 previously given himself unauthorized access to EDG network  
18 data that he had been removed from, and we suspected that  
19 Michael had taken the screenshot because he thought that  
20 Mr. Schulte had done the same thing again in this instance.

21 Q. Just finally, I think you may have answered this in part  
22 there. But, what are you referring to when you say that  
23 Michael may have additional knowledge about those anomalies?

24 A. That he knew that Mr. Schulte had manipulated the network  
25 in some way, taken data off of it and then had manipulated it

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1 to look as though it hadn't happened.

2 Q. So then just more briefly on the final sentence. Is that  
3 the same thing that the "relevant information concerning the  
4 circumstances" refers to?

5 A. It is.

6 Q. Where it says "recent inquiries indicate that Michael is  
7 still withholding that information," what recent inquiries are  
8 you referring to?

9 A. He had had an interview with the Department of Justice in  
10 the summer of 2019 where he again was non-cooperative with  
11 questioning about that particular incident, and others  
12 surrounding his interaction with Mr. Schulte.

13 MR. DENTON: Ms. Hurst, can we zoom out and go to  
14 paragraph 6 on page three, please.

15 Q. Sir, could you do me a favor and read the first sentence  
16 here.

17 A. "Given the magnitude of the theft of the CCI toolkit and  
18 its concomitant damage to national security, CIMC views  
19 Michael's lack of cooperation as a significant and untenable  
20 risk to the security of the operations on which he now works  
21 and any new tools he deploys for CCI."

22 Q. Does that sentence indicate that you believe Michael was  
23 responsible for that theft?

24 A. No, it does not.

25 Q. Why was his lack of cooperation a concern with respect to



K2R3SCH1

Hall - Direct

1 the security of the operations on which he now works?

2 A. One of the fundamental principles of holding a clearance at  
3 CIA is that we trust that you are going to be a good steward of  
4 classified information. And the fact that Michael was  
5 unwilling to cooperate with the security process, coupled with  
6 his access to sensitive data, led us to feel that we could not  
7 trust him in access.

8 MR. DENTON: If we can just zoom out and go back to  
9 page one, Ms. Hurst.

10 Q. Do you see where it says "Memorandum for Director, Office  
11 of Security"?

12 A. I do.

13 Q. After this memo was drafted, was it sent to the director of  
14 the Office of Security?

15 A. It was.

16 Q. Did you speak with the director about it?

17 A. I did.

18 Q. Why did you speak with the director about this memo?

19 A. He was not in his office and on the computer system at the  
20 time. So in the interest of time, I spoke with him on the  
21 secure line about the content of the memo.

22 Q. Tell us what you spoke about with him.

23 A. We talked about the reasons for our request to place  
24 Michael on enforced admin leave, and I read to him portions of  
25 the memo over the secure line.

K2R3SCH1

Hall - Cross

1 Q. At any point during your conversation with the director did  
2 you indicate that Michael was a suspect in the Vault 7 leak?

3 A. No.

4 Q. Why didn't you indicate that?

5 A. Because he wasn't.

6 Q. Did the director ultimately agree with the recommendation  
7 in the memo?

8 A. He did.

9 Q. As far as you know, were any of these reasons why Michael  
10 was placed on administrative leave ever communicated to  
11 Michael?

12 A. No.

13 Q. Why not?

14 A. It's not our standard practice at the agency to communicate  
15 the reason for placing somebody on enforced admin leave. We  
16 simply tell them that they are going to be placed on enforced  
17 admin leave, and walk them through the process for their  
18 interaction with the agency during that time.

19 MR. DENTON: No further questions, your Honor.

20 THE COURT: Ms. Shroff?

21 CROSS-EXAMINATION

22 BY MS. SHROFF:

23 Q. Let's start at the very beginning, okay?

24 A. Okay.

25 Q. Let's pull up the memo. In preparation of writing this

K2R3SCH1

Hall - Cross

1 memo, Mr. Hall, did you review Michael's investigative file?

2 A. I didn't personally review his investigative file, no.

3 Q. You told Mr. Denton in one of your conversations with him  
4 that you had a staffer -- that's the word you used -- write the  
5 memo, correct?

6 A. It was a senior investigator within our department, yes.

7 Q. Do you know if you told him to review Michael's  
8 investigative file before writing this memo?

9 A. She -- I did not tell her to review his investigative file.  
10 But she was familiar with it, having been an investigator on  
11 this particular matter.

12 Q. How about, did you tell her -- what's her first name, by  
13 the way?

14 A. Tracy.

15 Q. Okay. And did you tell Tracy to review Michael's bio file?

16 A. I did not.

17 Q. You did not.

18 A. No.

19 Q. Did you tell her to review any other documents before  
20 assigning her the task of drafting this memo?

21 A. No, I did not.

22 Q. Did you review Michael's investigative file in preparation  
23 for your testimony today?

24 A. I did.

25 Q. You did, right?

K2R3SCH1

Hall - Cross

1 A. Yes.

2 Q. You reviewed Michael's entire investigative file before you  
3 testified today, correct?

4 A. No, I did not, not his entire file. I did not review his  
5 security file. I reviewed the CIMC assessment of Michael.

6 Q. So you reviewed his investigative file; is that what it's  
7 called?

8 A. No. I reviewed the CIMC assessment of Michael and his  
9 association with this particular theft.

10 Q. Right. When did you review those documents?

11 A. Over the course of the last week or two I would say.

12 Q. Did you also review Michael's polygraphs?

13 A. No, I did not review Michael's polygraph reports.

14 Q. You did not review the polygraph reports which he did not  
15 pass conclusively?

16 A. Again, I reviewed the CIMC assessment that had summaries of  
17 his polygraph in them. I did not review the specific polygraph  
18 reports from the Office of Security.

19 Q. Did you provide that file that you reviewed to Mr. Denton  
20 here?

21 A. I'm sorry. Say that again?

22 Q. Sure. The file that you reviewed to prepare for your  
23 testimony here today, did you provide a copy to Mr. Denton?

24 A. The agency provided a copy, yes.

25 Q. By agency, do you mean like those lawyers that are sitting

K2R3SCH1

Hall - Cross

1 in the courtroom here today?

2 A. I don't know who -- I would assume the Office of General  
3 Counsel, but I don't know specifically.

4 Q. Okay. Mr. Denton asked you about your work at the CIA,  
5 correct? You said you were employed by the CIA for 15 years,  
6 right?

7 A. Yes.

8 Q. And you were the deputy chief at CIMC, correct?

9 A. I'm the deputy chief of the Counterespionage Department,  
10 which is one department within CIMC, yes.

11 Q. You've been in that position for how long now, about a  
12 year, not quite a year?

13 A. Over a year, since January of 2019.

14 Q. Before that, what was your position before that?

15 A. Just prior to this position, I was the chief of the  
16 security intelligence cell within the Office of Security.

17 Q. It's fair to say, is it not, Mr. Hall, that you take your  
18 work seriously?

19 A. I take my work seriously, yes.

20 Q. As part of your work at the CIA, you were responsible for  
21 drafting memos such as this one, correct?

22 A. No, I'm not usually the person who drafts these types of  
23 memos. As a senior manager within the department, I may review  
24 them and approve them for official routing.

25 Q. Okay. Well, you drafted this memo in the sense that you

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Hall - Cross

1 reviewed it with the person -- or as you called her, the  
2 staffer -- who wrote the memo, correct?

3 A. I reviewed it, and I approved her final draft, yes.

4 Q. Right. When you reviewed it, you reviewed it literally  
5 contemporaneously with her, correct?

6 A. Yes, that's correct.

7 Q. So as she was typing it up, you were reviewing it, correct?

8 A. Not as she was typing it up. When she had completed her  
9 final draft.

10 Q. So let me direct your attention to a document here that  
11 might refresh -- are you sure that you did not review it as it  
12 was being drafted?

13 A. I did not review it as she was drafting it. She had a  
14 final draft that I looked on her computer, did review the  
15 language, and approved it for its routing to the director.

16 Q. So, do you know what date the drafting of this memo  
17 started?

18 A. No, I don't recall.

19 Q. Do you recall telling Mr. Denton that you spoke and  
20 reviewed it with the person as it was being drafted and spoke  
21 about it verbally? Do you recall that?

22 A. Yes, vaguely.

23 Q. Vaguely? This was only February 22. That's not even a  
24 week ago.

25 A. Yes, I recall it.

K2R3SCH1

Hall - Cross

1 Q. Right. You were on a phone call, correct, with Mr. Denton  
2 here, right?

3 A. Yes.

4 Q. And on that phone call was a CIA lawyer whose initials are  
5 C.G., correct? Is there a CIA lawyer on the call?

6 A. Yes, there was.

7 Q. Okay. And then there was the agent on the call?

8 A. I believe so. I'm not sure.

9 Q. Well, you are the CIA, right? Did you take notes of who  
10 was on a telephone call with you?

11 A. I did not personally take notes, no.

12 Q. Do you know who the other participants were?

13 A. I don't know specifically who was on the call other than  
14 Mr. Denton.

15 Q. Okay. So, you spoke to Mr. Denton less than a week ago,  
16 correct?

17 A. Yes.

18 Q. And you don't recall telling him that you were with the  
19 person as the memo was being drafted, correct?

20 A. I was with her as I directed her to draft the memo, and as  
21 I cleared on the final language, the final draft.

22 Q. But that wasn't the question I asked. My question was do  
23 you recall telling him that you were physically present as the  
24 memo was being drafted?

25 A. No, I don't recall that.

K2R3SCH1

Hall - Cross

1 Q. Okay. When you reviewed this memo, you were careful in  
2 your review, correct?

3 A. Yes.

4 Q. You knew it was an important memo to write, correct?

5 A. No more so important than any other memo we draft.

6 Q. No more important than any other memo you draft. How close  
7 to execution of this memo was this memo drafted?

8 A. Within a matter of a day.

9 Q. Within a matter of a day, right?

10 A. Yeah.

11 Q. You had urgency to this memo, correct, according to you?

12 A. There was -- yes.

13 Q. Right. This memo involved your precious tools, correct?

14 A. The memo involved our decision that Michael was an  
15 unacceptable risk to leave in place, yes.

16 Q. In August of 2019, correct?

17 He was an unacceptable risk to leave in place in  
18 August of 2019, correct?

19 A. Yes, yes.

20 Q. When was this altercation with Mr. Schulte, the physical  
21 one?

22 A. I don't recall the exact date.

23 Q. Did Mr. Denton not prepare you that question?

24 A. We didn't discuss specific dates of the altercation.

25 Q. Did you read it in his investigative file?



K2R3SCH1

Hall - Cross

1 A. I recall reading about the altercation. I did not focus on  
2 the specific date.

3 Q. Ah. Well, we'll get to that, because a lot of your memo is  
4 based on your concern about Mr. Michael not discussing that  
5 physical altercation, the date of which you do not remember.  
6 Okay?

7 A. Okay.

8 Q. You do recall, Mr. Hall, that that altercation definitely  
9 did not take place in 2019, right?

10 A. It did not.

11 Q. Not even 2018, correct?

12 A. It did not.

13 Q. Not even 2016, correct?

14 A. I don't recall whether it was '16 or not.

15 Q. Sitting here today, you did not recall that it happened in  
16 October of 2015?

17 A. No, I don't.

18 Q. Sitting here today, sir, do you know when was the first  
19 time Michael declined to talk to anyone at the CIA about this  
20 physical altercation; do you remember?

21 A. The specific date, I don't.

22 Q. Forget about date. Let's go with year. Do you even  
23 remember a year?

24 A. It would have been --

25 Q. No, no, not "would have been." Do you remember a year?

K2R3SCH1

Hall - Cross

1 A. I do not.

2 Q. Do you by any chance even know if management ever knew  
3 about this altercation in 2015?

4 A. No, I don't know.

5 Q. Do you know if Sean F. even thought that altercation worthy  
6 enough to escalate it to the next level of management?

7 A. I don't know, but it wouldn't have been his responsibility  
8 to do so.

9 Q. It wouldn't have been --

10 A. The Office of Security can independently investigate  
11 incidents like that in the workplace.

12 Q. Great. My question wasn't that. My question was, and  
13 please try and listen to my question. My question is, were you  
14 aware that their immediate boss did not think that fight of any  
15 consequence such that he escalated it to security?

16 Were you aware of even that?

17 A. I was not aware of that. But their immediate boss was not  
18 a security officer.

19 Q. Okay. We'll go with that. Let's put it this way. Do you  
20 know if the fight started over two grown men throwing rubber  
21 bands at each other?

22 A. I do.

23 Q. Right. And you know that after that fight, nobody thought  
24 anything of it, correct? Until 2019, when you wrote this memo,  
25 correct?

K2R3SCH1

Hall - Cross

1 A. No --

2 Q. No action was taken against Mike, right, based on the  
3 fight? Was any action taken?

4 A. No, there wasn't. But that does not mean there wasn't --

5 Q. No, no.

6 MR. DENTON: Your Honor, can he answer question?

7 THE COURT: He can answer the question.

8 Q. The question was, was any action taken. That was the  
9 question.

10 A. No, no action was taken.

11 Q. Was he moved out of his group?

12 A. No.

13 Q. Moved out of his branch?

14 A. I don't recall. I don't know.

15 Q. They didn't even move his desk, correct?

16 A. I don't know.

17 Q. Okay. Let's just go back to this memo, all right? Would  
18 you say, sir, that this memo is an important document for the  
19 CIA itself to be accurate about?

20 A. We always try to be accurate in our documentation.

21 Q. So you tried to be accurate here, correct?

22 A. Yes.

23 Q. And you would agree with me that this memo has implications  
24 for the employee himself, Michael, correct?

25 A. It does.

K2R3SCH1

Hall - Cross

1 Q. Right. It has implications for his future, correct?

2 A. It does.

3 Q. It has implications for your agency, correct?

4 A. Somewhat, but it's more focused on Michael.

5 Q. It's more focused on Michael and not the mission? I  
6 thought the whole thing about the CIA was mission before self,  
7 correct?

8 A. That's not what we're talking about when we're talking  
9 about the memo, however.

10 Q. Okay. Now, in this memo, you requested rather urgently  
11 that Michael be placed on administrative leave, correct?

12 A. Correct.

13 Q. And when a person is placed on administrative leave,  
14 they're not allowed to come back to work, correct?

15 A. That's correct.

16 Q. And they're banned from every CIA facility, correct?

17 A. That's correct.

18 Q. It's a serious sanction, you'd agree with me, correct?

19 A. It's a serious step, yes.

20 Q. And you knew when you wrote this memo that people would  
21 read this memo, did you not?

22 A. I knew that a limited number of people at the agency would  
23 read the memo, yes.

24 Q. And you knew that people would rely on the facts in this  
25 memo, correct?

K2R3SCH1

Hall - Cross

1 A. Yes, I did.

2 Q. And you knew, sir, that important decisions were going to  
3 be made based on this memo, correct?

4 A. Correct.

5 Q. You knew this memo would be read closely, correct?

6 A. Yes.

7 Q. Scrutinized, correct?

8 A. It would be scrutinized for its approval, yes.

9 Q. Well, no. Michael could want to take action based on the  
10 memo, correct?

11 A. It could, but that's not part of my responsibility. It's  
12 simply processing the request.

13 Q. Okay. It is fair to say that you wanted to make sure that  
14 this memo was clear, correct?

15 A. Yes.

16 Q. You wanted it to be direct, correct?

17 A. Yes.

18 Q. And you didn't want to lie or color or bias this memo in  
19 any way, correct?

20 A. Correct.

21 Q. Okay. And when you take a look at the memo, let's start  
22 with where you started. Okay. And then we'll compare the  
23 answers you gave to the government today. Okay?

24 A. Okay.

25 Q. All right. So let's start with paragraph 1. "CIMC

K2R3SCH1

Hall - Cross

1 requests enforced administrative leave for Michael, a current  
2 CCI/COG employee."

3 Let's just stop there for a minute. What is COG?

4 A. The Computer Operations Group within CCI.

5 Q. Right. And Michael had moved from OSB to COG, correct?

6 A. I don't know.

7 Q. You don't know?

8 A. No.

9 Q. You don't know Michael had been allowed to move from OSB to  
10 COG after the physical altercation with Mr. Schulte?

11 A. I don't know what the timeline was of his moving to COG.

12 Q. At that time, I take it there were no concerns raised to  
13 security about Michael, correct?

14 A. I don't know.

15 Q. COG is the unit that works with deployment of tools,  
16 correct?

17 A. Yes.

18 Q. It is a coveted position to work in COG, correct?

19 A. I don't know.

20 Q. Okay. But he was allowed to move to COG, correct?

21 A. He was.

22 Q. Okay. And certainly you are not suggesting, are you, sir,  
23 that there is no concern about unauthorized disclosure for any  
24 employee working in COG, correct?

25 A. No.

K2R3SCH1

Hall - Cross

1 Q. Okay. In fact, you want to make sure that the people  
2 working in COG are people you can trust, correct?

3 A. I would say that the -- our interest is making sure that  
4 people across the agency are people that we can trust.

5 Q. Sure. When we talk about people across the agency, you can  
6 give that answer. Right now I'm asking about COG.

7 Correct? You want to make sure everyone in COG is  
8 somebody you trust, right?

9 A. Correct, the same as every other employee in the agency.

10 Q. Great. Let's go to paragraph 2. Now, let's start with  
11 this justification, right, that you give for putting this man  
12 on administrative leave. Let's start with the first sentence.  
13 "Michael's lack of cooperation with inquiries into his past  
14 activities with the person of interest in the FBI  
15 investigation" and -- let's stop there.

16 That's your first sentence, right? His lack of  
17 cooperation.

18 A. Yes.

19 Q. When you wrote that memo, how many times had Mr. Michael  
20 actually met with the FBI?

21 A. I don't know the specific number. It was more than one.

22 Q. More than one?

23 A. Yes.

24 Q. But you are saying he didn't cooperate. He lacked  
25 cooperation with inquiries.

K2R3SCH1

Hall - Cross

1 A. Correct.

2 Q. Right. But he met with the FBI, correct? He met with the  
3 FBI on March 16, 2017, correct?

4 A. I don't know the exact dates.

5 Q. Okay. Fair enough. Let me ask you something. In  
6 preparation for your testimony here today, did you learn about  
7 the fact that Michael had testified?

8 A. Yes.

9 Q. In this case?

10 A. Yes.

11 Q. Had you read his testimony?

12 A. No.

13 Q. No. But you knew he had testified?

14 A. Yes.

15 Q. You knew that this United States attorney's office put him  
16 in that witness stand, right? Correct?

17 A. Yes.

18 Q. Called him as a witness, correct?

19 A. Yes.

20 Q. He swore, put his hand up to tell the truth, correct?

21 A. I don't know, I wasn't here.

22 Q. Okay. Did you tell them, Hey, we don't consider this man  
23 truthful?

24 A. I didn't have that -- we --

25 Q. No, no. Did you tell these fine gentlemen here that you,



K2R3SCH1

Hall - Cross

1 head of security for the CIA, did not consider this man  
2 truthful?

3 A. I'm not the head of security for the CIA.

4 Q. Whatever you are. Did you tell them that you did not think  
5 Michael was truthful?

6 A. We told them that he was uncooperative throughout the  
7 security process.

8 Q. Okay. Let's go to the next line right here. What is this  
9 word?

10 A. "Truthfulness."

11 Q. Did you tell them you doubted his ability to be truthful?

12 A. I didn't specifically state that. But, would assume they  
13 inferred it based on our memo.

14 Q. You assumed that the United States Attorney's Office for  
15 the Southern District of New York assumed that you did not  
16 think Michael was truthful?

17 A. We said that he was non-cooperative.

18 Q. Read your words here. Why don't you read it for me, I'm  
19 sorry. You read it for me as Mr. Denton asked you to read it.  
20 Just read the word for me. Unexplained activities on the  
21 computer system, blah, blah, blah, raises significant concerns  
22 about his -- what is the first adjective you used?

23 A. "About his truthfulness."

24 Q. Right. First, you chose your adjectives, correct?

25 A. I didn't choose this adjective. I was not the one who

K2R3SCH1

Hall - Cross

1 drafted the memo.

2 Q. You reviewed the memo, you signed off on the memo.

3 Correct? You are not sitting here blaming your staffer, are  
4 you?

5 A. I'm not blaming anybody.

6 Q. All right. Let's stay with this paragraph, okay, for a  
7 minute because I'm not going to shift it.

8 Let me ask you a question here. You finalized this  
9 memo when?

10 A. In August of 2019.

11 Q. When did you give it to the United States attorney's  
12 office?

13 A. I don't recall the specific date.

14 Q. You don't recall when the United States attorney's office  
15 was first given this memo?

16 A. It was at some point this year. I don't recall the  
17 specific date, I think.

18 Q. What year are we in now?

19 A. 2020.

20 Q. Were you ever told that the United States attorney's office  
21 was given this memo literally after Michael took the witness  
22 stand?

23 Did these lawyers tell you that, by the way?

24 A. I don't recall.

25 Q. You can talk to the lawyers, right? They're employees of

K2R3SCH1

Hall - Cross

1 the CIA, right?

2 A. They are.

3 Q. Right. They were with you when you testified, correct?

4 They're with you now. They're sitting in court, right?

5 A. They are.

6 Q. Right. You talked to them this morning, correct?

7 A. I did.

8 Q. They badged you into the United States attorney's office,  
9 sat you down on the fifth floor, and said Wait here until we  
10 take you up, correct?

11 A. Correct.

12 Q. They had a badge to get into their office, correct? You  
13 just walked on in, right?

14 A. I don't know. I wasn't focused on who had a badge.

15 Q. Okay. But you knew that the lawyers from the CIA were with  
16 you, right?

17 A. They're physically here, yes.

18 Q. Did you ask them, Hey, when did you give this memo to these  
19 people?

20 A. No, I didn't.

21 Q. You didn't ask them?

22 A. No.

23 Q. When did you first find out Michael testified in this case?

24 A. I don't recall the specific date. It was within the last  
25 month.

K2R3SCH1

Hall - Cross

1 Q. You found out within the last month that Michael testified  
2 in this case. Did you reach out to them and say, Hey, you  
3 know, I wrote a memo where I found this man to not be truthful?

4 A. No, I did not.

5 Q. Okay. Do you know when the CIA gave this memo to the FBI?

6 A. I don't know the specific date.

7 Q. You only know it was in 2020?

8 A. Yes.

9 Q. Okay. Let's go to the next word. You had concerns about  
10 his trustworthiness, correct?

11 A. Yes, that's correct.

12 Q. And you had concerns about his willingness to cooperate  
13 with both routine OS investigation processes and the criminal  
14 investigation into the theft from his office.

15 A. That's correct.

16 Q. His office. Not the office. His office. Right?

17 A. From CCI, yes.

18 Q. No, no. Please. The document is in evidence. In the  
19 document, you have written "his office." Right?

20 A. Are you suggesting his physical office?

21 Q. I'm not suggesting anything. I didn't write it. I didn't  
22 write it, I didn't review it, I didn't sign off on it.

23 A. It's referring to CCI.

24 Q. So you consider CCI to be Mr. Michael's office.

25 A. That's correct.

K2R3SCH1

Hall - Cross

1 Q. Okay. You didn't say CCI, correct?

2 A. No.

3 Q. Okay. Let's just stay with this. When you wrote this  
4 statement, right, you said your concern was that "he had not  
5 been truthful, trustworthy or willing to talk about the  
6 unexplained activities on the computer system from which CCI  
7 data was stolen known as the DevLAN," correct?

8 A. Correct.

9 Q. Right?

10 A. That's what it says.

11 Q. Okay. And when Mr. Denton was talking to you, he asked you  
12 several times whether your concern was that he also didn't want  
13 to talk about a fight in 2015, correct?

14 A. Correct.

15 Q. So let me just ask you this. Had Michael told you that he  
16 had never participated in a fight at all, would you have  
17 believed him?

18 A. I don't know.

19 Q. Exactly. Who knows. If he had told you he had nothing to  
20 do with the unexplained activities on the computer system,  
21 given the fact that you had concerns about his truthfulness,  
22 trustworthiness and willingness, would you have believed him?

23 A. He didn't discuss any of it with us.

24 Q. Exactly.

25 A. So I don't know.

K2R3SCH1

Hall - Cross

1 Q. Exactly. Exactly. But, your testimony, and I want to be  
2 sure I understood it correctly, okay, is that you left the  
3 criminal investigation to the FBI?

4 A. That's correct.

5 Q. Right?

6 A. Yes.

7 Q. You don't know if Mr. Michael spoke to the FBI about the  
8 screenshot, do you?

9 A. I don't know.

10 Q. You don't know if he told them that he took a screenshot,  
11 do you?

12 A. I don't know.

13 Q. You don't know if he told them I checked the screenshot, do  
14 you?

15 A. I don't know the specifics of his discussions with the FBI.

16 Q. For all you know, he told them everything he knew about the  
17 screenshot, correct?

18 A. I don't know.

19 Q. Then why did you write it?

20 A. Because we were talking about our internal security  
21 processes --

22 Q. But --

23 A. -- which he was uncooperative with.

24 Q. Your internal security processes?

25 A. That's correct.

K2R3SCH1

Hall - Cross

1 Q. Why would you put him on administrative leave the very day  
2 after which he ended his interview with the FBI in New York  
3 City, August of 2019?

4 A. Because it was a continuing pattern of not cooperating with  
5 investigators.

6 Q. Really? So you are suggesting to this jury that the fact  
7 that he didn't cooperate with the CIA in 2015 didn't bother  
8 you, 2016 didn't bother you, 2017 didn't bother you, 2018  
9 didn't bother you, but all of a sudden, boom, something  
10 happened on August 19 that you decided he immediately had to be  
11 put on administrative leave. That's your testimony?

12 A. Yes.

13 Q. How? Tell me, what concern was there on August 19 that did  
14 not exist on August 1st?

15 A. Again, he had been uncooperative throughout the process,  
16 and the informal feedback we received from his interview with  
17 the Justice Department was that -- that he was additionally,  
18 again uncooperative, and that led us to believe that he could  
19 be facing potential legal jeopardy because of his  
20 non-cooperation.

21 Q. So the FBI's telling you prompted you to put on him on  
22 administrative leave. It didn't have to do with the CIA at  
23 all?

24 A. No.

25 Q. Oh.

K2R3SCH1

Hall - Cross

1 THE COURT: Ms. Shroff, would this be a convenient  
2 place to take our morning recess?

3 MS. SHROFF: Sure. I can take a recess whenever you  
4 want.

5 THE COURT: Pardon me?

6 MS. SHROFF: This is fine. You want to do it now?

7 THE COURT: Yes.

8 (Jury excused)

9 THE COURT: See you in 15 minutes.

10 (Recess)

11 (Continued on next page)



K2rWsch2

Hall - Cross

1 (Jury present)

2 THE COURT: Please be seated.

3 Ms. Shroff.

4 BY MS. SHROFF:

5 Q. Mr. Hall, before you made the decision or before whoever  
6 signed off on placing Mr. Michael on administrative leave, did  
7 you call the U.S. Attorney's Office and inform them or ask them  
8 about their view on the decision?

9 A. No.

10 Q. Did you not participate in a phone call with the United  
11 States Attorney's Office where somebody asked them whether or  
12 not they should put Michael on administrative leave?

13 A. I participated in a phone call with them, but I don't  
14 recall specifically asking them whether we should place Michael  
15 on administrative leave.

16 Q. So what is your recollection of the point of that phone  
17 call to the United States Attorney's Office?

18 A. It was to be in receive mode from -- to receive informal  
19 feedback on how his interview had gone with the Justice  
20 Department.

21 Q. Why did you want to know about how his interview had gone  
22 with the Justice Department given the fact that you were trying  
23 to, as you put it on direct, keep the criminal investigation  
24 separate from the CIA inquiry?

25 A. Because it still had a bearing on Michael's individual

K2rWsch2

Hall - Cross

1 security processing and his clearance, and even though we  
2 didn't intend to necessarily take any action, we would welcome  
3 that type of feedback or information about any of our  
4 employees.

5 Q. You'd welcome feedback or information from the agency that  
6 is prosecuting another individual?

7 A. No. We would welcome factual feedback on our employee's  
8 engagement with other government agencies.

9 Q. So you wanted the FBI's feedback as to whether or not the  
10 FBI was receiving the type of information that they wanted  
11 because that would impact your decision on whether or not to  
12 put him on administrative leave?

13 A. No.

14 Q. OK. So, the CIA wanted to put him on administrative leave,  
15 correct? Is that your testimony?

16 A. No, we didn't want to put him on administrative leave. It  
17 was a decision based on a risk analysis.

18 Q. OK. Let's stay with that -- you did a risk analysis. It's  
19 your testimony now that you did your risk analysis for the  
20 first time in August of 2019?

21 A. Not for the first time. It was -- it was done -- it's done  
22 just like for any other employee throughout the course of their  
23 career.

24 Q. But he had spoken -- by he, I mean Michael -- had spoken to  
25 the U.S. Attorney's Office several times before August of 2019,

K2rWsch2

Hall - Cross

1 right?

2 A. I don't recall how many times he had spoken to them.

3 Q. Did you check each time that he spoke with the FBI as to  
4 how it had gone?

5 A. No.

6 Q. Did you check in 2018 with the FBI, Hey, should we put him  
7 on administrative leave?

8 A. No.

9 Q. How about in 2019, before August; did you check with them,  
10 Hey, should we put him on administrative leave?

11 A. I'm sorry. On what date?

12 Q. Before August of 2019.

13 A. No.

14 Q. So in August of 2019, you learned that Mr. Michael had  
15 invoked, correct; he had asked for a lawyer? Correct?

16 A. Correct.

17 Q. And you had also heard, had you not, that he had told the  
18 FBI that he did not believe that Mr. Schulte had done the  
19 reversion? Correct?

20 A. I -- I don't recall specifically hearing that, no.

21 Q. Did you ask?

22 A. No.

23 Q. You never asked?

24 A. I didn't personally, no.

25 Q. OK. How many people were on this phone call when the CIA

K2rWsch2

Hall - Cross

1 informed the agency that is prosecuting another individual  
2 whether or not they should put a person at the CIA on  
3 administrative leave?

4 A. Again, that wasn't the purpose of the phone call.

5 Q. What was the purpose of the phone call?

6 A. It was to receive the facts about how Michael's interview  
7 had gone with the Department of Justice.

8 Q. But the Department of Justice is a separate agency from  
9 you, right?

10 A. That's correct.

11 Q. You don't want to taint their investigation, correct?

12 A. It's not about taking their investigation. It's about  
13 receive --

14 Q. No. I said -- I'm sorry.

15 A. -- receiving the facts surrounding the interview.

16 Q. No. I said taint, not take. I didn't think you could take  
17 their investigation. I said taint.

18 Did you want to taint their investigation?

19 A. No.

20 Q. So why involve them in what is purely an employee decision?

21 A. Because, again, it had a direct bearing, his  
22 noncooperation, on his security clearance and his security  
23 processing.

24 Q. How did you determine that he was noncooperative? Let me  
25 ask that.

K2rWsch2

Hall - Cross

1 A. He was afforded multiple interviews with Office of Security  
2 investigators for CIA in which he refused to discuss the  
3 altercations or his actions taking the screenshot.

4 Q. OK. But he had refused that in 2016, correct?

5 A. That's correct.

6 Q. '17, correct?

7 A. I believe so. Correct.

8 Q. You didn't place him on administrative leave then, right?

9 A. No.

10 Q. OK. How about 2018?

11 A. No.

12 Q. You didn't call the DOJ at that time, right, saying: He's  
13 not talking about this altercation. What is your view on us  
14 putting him on administrative leave?

15 A. No. That's correct.

16 Q. OK. Now, you said he was uncooperative, correct?

17 A. Yes.

18 Q. On August 19, he had flown to New York, correct, or taken a  
19 train or taken a bus, whichever way?

20 A. I don't know the specific date.

21 Q. OK. Well, he had met with the FBI, correct?

22 A. With the Justice Department, yes.

23 Q. OK. And do you, by any chance, know if the Justice  
24 Department had told every CIA employee that meeting with them  
25 was voluntary? Correct?

K2rWsch2

Hall - Cross

1 A. I don't know.

2 Q. OK. Well, did they tell you that meeting with them was  
3 voluntary?

4 A. Me personally?

5 Q. Yes, you.

6 A. Yes.

7 Q. OK. Did they have you sign a nondisclosure that they had  
8 every other employee sign?

9 A. No.

10 Q. OK. Have you seen their nondisclosure?

11 A. I have not.

12 MS. SHROFF: What am I up to, Q?

13 Q. I'm just going to show this only to you. OK?

14 A. OK.

15 Q. I don't need you to look at who signed it or whose name it  
16 is. I just want you to read the text. OK?

17 Does that refresh your recollection, by any chance, about a  
18 nondisclosure agreement that the FBI had CIA employees sign?

19 A. Again, this is the first time I'm seeing a nondisclosure  
20 agreement from the FBI to any CIA employees in this matter.

21 Q. OK. You can put it on aside. Just flip it over. Thank  
22 you.

23 And they didn't have you sign one, right?

24 A. No, they did not.

25 Q. And do you, by any chance, know if every CIA employee was

K2rWsch2

Hall - Cross

1 told that the interview was voluntary?

2 A. I do not know that.

3 Q. Do you know that the FBI could not compel somebody to talk  
4 to them?

5 A. I don't know.

6 Q. But you do know that Michael met with the FBI, nonetheless,  
7 in August of 2019, correct?

8 A. Yes.

9 Q. Right. And he sat down and he spoke to them, correct?

10 A. Yes.

11 Q. And you also know that subsequent to them speaking to him,  
12 he was called as a witness for the government, correct?

13 A. Yes.

14 Q. And throughout the time, you never disclosed, did you, this  
15 memorandum? Correct?

16 A. No, I don't think so. No.

17 Q. OK. Now, I'm not going to go through this entire document,  
18 but let's just go to page 2, please. And let me go back to  
19 background section where you are at Joshua Schulte. Here,  
20 right?

21 A. OK.

22 Q. Do you see that language, where you're talking about  
23 "Joshua Schulte and Amol, who reportedly had a physical  
24 altercation within EDG spaces," correct?

25 A. Correct.

K2rWsch2

Hall - Cross

1 Q. That's not factually correct, right?

2 A. I'm sorry?

3 Q. That's not factually correct, right?

4 A. No. It's factually correct, to my knowledge.

5 Q. OK. So it's your understanding that Mr. Schulte and Amol  
6 had a physical altercation? You think that's accurate?

7 A. Uh --

8 Q. OK. I'll take that.

9 MS. SHROFF: You can move that.

10 Q. Did you want to change your answer?

11 A. No.

12 Q. And then you talked some more, ultimately, right?

13 MS. SHROFF: Could you focus on ultimately, please.

14 Q. Sitting here today, sir, do you know that Mr. Michael had,  
15 in fact, answered all of the questions provided to him by  
16 Leonard Small about the physical altercation; or do you not  
17 know?

18 A. I don't know. I don't know who that is.

19 Q. OK. Do you know somebody in SIB named Mr. Small?

20 A. I don't.

21 Q. So when you said that Mr. Michael had been uncooperative  
22 with the internal investigation, you don't know if that's  
23 accurate? I mean actually accurate.

24 MS. SHROFF: You can take this paragraph down.

25 Q. Do you know?



K2rWsch2

Hall - Cross

1 A. No. It was accurate. He was asked about it several times  
2 from several investigators, and he, on a number of occasions,  
3 refused to talk about it.

4 Q. Right. His altercation with Mr. Schulte he refused to talk  
5 about, according to you, correct?

6 A. Correct.

7 Q. Right. I'm asking you if you're aware that Mr. Michael had  
8 answered all of the questions about Amol's altercation with  
9 Mr. Schulte.

10 A. I don't know.

11 Q. You don't know, right?

12 A. No.

13 Q. So you don't know if he had been cooperative, correct?

14 A. I don't know. I think initially he was not cooperative.

15 Q. Your testimony is it was your impression that Michael was  
16 not cooperative about what he knew of the altercation between  
17 Amol and Mr. Schulte? That's your testimony?

18 A. I -- I don't recall.

19 Q. OK. I'll take your word for it that you don't recall.

20 Now, you also talked about, on direct with Mr. Denton --  
21 right -- you talked about the fact that Mr. Schulte and  
22 Michael, according to you, had both a personal and a  
23 professional relationship? Correct?

24 A. That's correct.

25 Q. Right. Were you aware that Mr. Michael told the FBI that

K2rWsch2

Hall - Cross

1 he had stopped hanging out with Mr. Schulte after he had  
2 transferred out of OSB and gone to COG?

3 A. No, I was not.

4 Q. Were you aware that Michael had told the FBI that he had  
5 been on a TDY; when he returned, he then started at COG and had  
6 not been as friendly with Mr. Schulte?

7 A. No, I was not.

8 Q. Were you informed that he had tried to distance himself  
9 from Mr. Schulte because of all the hoopla going on with  
10 Mr. Schulte?

11 A. No.

12 Q. Do you recall if, after January of two thousand and --  
13 let's just be safe, seventeen or February of 2017, was there  
14 any contact between Mr. Schulte and Michael?

15 A. I don't know.

16 Q. You don't know if they were friends anymore even in 2017,  
17 correct?

18 A. Correct. I don't know.

19 Q. You don't know if they were friends in 2018, correct?

20 A. Correct.

21 Q. So you didn't know what their personal relationship was  
22 when you wrote this memo, right?

23 A. Correct.

24 Q. Now, let's talk about their professional relationship.  
25 They were colleagues, correct --

K2rWsch2

Hall - Cross

1 A. Yes.

2 Q. -- according to you? Right?

3 And what else did you know about their professional  
4 relationship?

5 A. That's it, basically. That and that they had had a  
6 physical altercation in the workplace.

7 Q. That's all you knew, right?

8 A. Yes.

9 Q. So when you said close relationship, you didn't know what  
10 the close-relationship phrase was based on other than they were  
11 colleagues?

12 A. They were colleagues in the same component, in the same  
13 office, yes.

14 Q. OK. Now, in paragraph 4 -- correct -- you noted that  
15 Mr. Michael had undergone two sessions, two polygraph sessions,  
16 correct?

17 A. Yes.

18 Q. In May of 2017, correct?

19 A. Yes.

20 Q. Did not clear all issues, correct?

21 A. Correct.

22 Q. He's not placed on admin leave, is he?

23 A. No.

24 Q. OK. And then you have this language where you go on to  
25 say, "In wake of the theft of unauthorized disclosure of CCI's

K2rWsch2

Hall - Cross

1 cyber tool kit on WikiLeaks." Do you see all of that?

2 A. Yes.

3 Q. And all of this had long happened before May of 2017,  
4 right?

5 A. Correct.

6 Q. OK. So he had not cleared the poly after the CIA had  
7 learned of the WikiLeaks, correct?

8 A. Correct.

9 Q. And you had still not placed him on admin leave, correct?

10 A. Correct.

11 Q. OK. And then you go on to say that Michael's processing  
12 was paused as a part of that effort, right? Do you see that  
13 language?

14 A. I do.

15 Q. "As he held systems admin privileges on the DevLAN" --  
16 right -- "the system from which the tool kit was stolen and was  
17 present in EDG spaces during the time frame of the theft?  
18 Correct?

19 A. Correct.

20 Q. And even though you had that information way before 2019,  
21 you took no steps to put him on admin leave, correct?

22 A. That's correct.

23 MS. SHROFF: Now, let's look at five.

24 Q. "In support of the ongoing criminal investigation," right?

25 A. Yes.

K2rWsch2

Hall - Cross

1 Q. "CIMC conducted comprehensive reviews of all individuals  
2 who could have perpetrated the theft of the CCI data, including  
3 Michael," correct?

4 A. Correct.

5 Q. You had no idea what comprehensive review was undertaken,  
6 correct?

7 A. I wouldn't say I have no idea.

8 Q. OK. Well, tell me. Specific to Michael, what  
9 comprehensive reviews did you undertake?

10 A. It's standard practice to review their security background,  
11 security file, the accesses that they have, and then try to  
12 piece together whether that individual is potentially  
13 responsible for an incident.

14 Q. So your testimony is you think CIMC did all of that?

15 A. Uh --

16 Q. You know, sitting here today, that CIMC undertook that  
17 review? You know that personally?

18 A. When I arrived at my job, I was briefed on the  
19 investigative process, which included that methodology for  
20 everyone in the subject pool.

21 Q. My only question was, do you know that specifically as to  
22 this gentleman?

23 A. Yes.

24 Q. OK. So you knew at the time that they had done it  
25 specifically as to Michael, correct?

K2rWsch2

Hall - Cross

1 A. Yes.

2 Q. You knew that Michael had more information than the  
3 run-of-the-mill CIA employee, according to you, correct?

4 A. I'm sorry?

5 Q. Well, nobody else had a screenshot, right?

6 A. No, not to my knowledge.

7 Q. Right. Nobody else had a running vSphere at the same time,  
8 correct?

9 A. I'm sorry?

10 Q. Nobody -- oh, did you know that Michael's vSphere was  
11 running at the same time?

12 A. I -- I don't know. Again, I'm not a technical  
13 professional. I don't know the details of the forensic  
14 analysis of the investigation.

15 Q. OK. But you said that he was eliminated, correct, as a  
16 suspect?

17 A. That's correct.

18 Q. So you don't know based on what he was eliminated?

19 A. He was eliminated based --

20 Q. Do you know specifically based on what he was eliminated,  
21 or do you just have a general idea?

22 A. I have a general idea that he was eliminated based on the  
23 forensic investigation conducted by the FBI.

24 Q. Oh, it was a forensic investigation conducted by the FBI,  
25 not --

K2rWsch2

Hall - Cross

1 A. The FBI as well as our own technical professionals looking  
2 at our network.

3 Q. OK. But it doesn't mention FBI in this paragraph, does it?

4 A. No, it doesn't.

5 Q. OK. So it's not based on the FBI in this paragraph,  
6 correct?

7 A. No.

8 Q. OK.

9 A. I'm not suggesting it is.

10 Q. So somebody told you it was based on something when they  
11 briefed you?

12 A. That's correct.

13 Q. OK. And you had no idea if on the date of the theft, which  
14 is the date picked by the FBI, whether Michael's vSpheres were  
15 running on Confluence, correct?

16 A. I don't know.

17 Q. You don't know where he was logged in, correct?

18 A. I don't know.

19 Q. You don't know what his badge records showed, correct?

20 A. I know his badge records showed that he left the facility  
21 with Mr. Schulte.

22 Q. OK. Do you know what his badge records showed at the time,  
23 where he was at the time the reversion started?

24 A. I don't recall.

25 Q. Where he was during the reversion?

K2rWsch2

Hall - Cross

1 A. I don't recall.

2 Q. Do you know where he was at the end of the reversion?

3 A. I don't know.

4 Q. Sitting here today, do you even know if you need to be at  
5 your desk, in the middle, while a reversion is taking place?

6 A. I don't know.

7 Q. Fair enough. All right.

8 OK. And let's keep going. You now have this testimony of  
9 risk assessment, right? I'm going to skip over this part and  
10 just go to six.

11 "Given the magnitude of the theft of the CCI tool kit,"  
12 correct? Right?

13 A. Yes.

14 Q. "And its concomitant damage to national security, CIMC  
15 views Michael's lack of cooperation as a significant and  
16 untenable risk to the security of the operations on which he  
17 now works and any new tools he deploys for CCI," correct?

18 A. Yes.

19 Q. You had a significant concern about him, correct?

20 A. About his lack of cooperation, yes.

21 Q. And the "lack of cooperation," the phrase that you use in  
22 paragraph 6, refers to the magnitude of the theft, correct?  
23 Right?

24 A. Yes.

25 Q. Nothing about a physical altercation in here, correct?



K2rWsch2

Hall - Cross

1 A. No.

2 Q. Nothing about Amol or Mr. Schulte, correct?

3 A. No.

4 Q. OK. Then, after you talk about the theft, you note, in the  
5 next line, whatever Mr. Michael's reasoning, he has not  
6 complied with routine inquiries by SIB, correct?

7 A. Correct.

8 Q. By the way, did you know that Mr. Schulte had, in fact,  
9 complied with all routine inquiries by SIB?

10 A. I didn't know that, no.

11 Q. OK. And that during the polygraph he had failed to provide  
12 clear and verifiable information concerning his activities in  
13 the workplace, correct, around the time of the theft? Right?

14 A. Correct.

15 Q. Not around the time of the fight, correct?

16 A. Correct.

17 Q. Not around the time of the Amol threat, correct?

18 A. Correct.

19 Q. OK. Now, you also note in this memo, do you not, that you  
20 have several concerns now, at the time of the writing of the  
21 memo? Correct?

22 A. Correct.

23 MS. SHROFF: And if you could go back to page 1, at  
24 the bottom. No, just at CIMC. Right there. Yes.

25 Q. Just read the last line for me, would you?

K2rWsch2

Hall - Cross

1 A. "CIMC believes curtailing his access to CIA spaces and data  
2 systems is necessary to safeguard against potential future  
3 losses of sensitive and classified information."

4 Q. So the concern was with computer security, correct?

5 A. I'm sorry?

6 Q. Your concern was to safeguard against future losses of  
7 sensitive and classified information, correct?

8 A. The concern was --

9 Q. I'm just asking you to read this. Is that what you said  
10 your concern was?

11 A. Correct.

12 Q. Right. You didn't say that my concern is that he's not  
13 talking about a fight now, so three and a half years later,  
14 let's put him on administrative leave, right?

15 A. No, but that's part of the context of the memo.

16 Q. That's not any part of the context of this line, is it?

17 A. Not that line, no.

18 Q. Right. And you don't say, do you, that the fact that he  
19 has refused to talk about a fight that happened in 2015 leads  
20 me to believe that he will no longer be trustworthy on tools in  
21 COG, correct?

22 A. No.

23 Q. Right. You could have said that if you wanted, right?

24 A. I suppose we could have.

25 MS. SHROFF: Right. So let's just go back to the very

K2rWsch2

Hall - Cross

1 end, to the assessments, again. I'm almost done. And the last  
2 page -- you know what? Actually, could you just go one page  
3 back. OK. There you go. Risk assessment. Right.

4 Q. Michael's behavior suggests a lack of concern for the loss,  
5 correct?

6 A. Yes.

7 Q. What loss are you talking about?

8 A. The theft of the Vault 7 data.

9 Q. OK. And a "lack of commitment to comply with the basic  
10 security agreements he entered into upon hire," correct?

11 A. Correct.

12 Q. Security agreements, correct?

13 A. Correct.

14 Q. Would you say that a fight about rubber bands does not have  
15 to do with security agreements?

16 A. I didn't say it did.

17 Q. OK. Now, let me ask you this. We are now in February of  
18 2020, right? Mr. Michael's still on administrative leave,  
19 correct?

20 A. That's correct.

21 Q. OK. So is the CIA planning on bringing him back as a  
22 full-time employee?

23 A. I don't know. I can't answer that.

24 Q. You're going to fire him at the end of this case, right?

25 A. I didn't say that.

K2rWsch2

Hall - Redirect

1 Q. I know you didn't. I'm asking you the question.

2 A. It's not my judgment to make.

3 Q. I understand. I didn't ask you if you were personally  
4 going to fire him. I asked you if you knew whether the CIA was  
5 going to fire him.

6 A. I don't speak on behalf of the entire CIA.

7 Q. OK. On behalf of what part of the CIA do you speak, sir?

8 A. I'm an Office of Security careerist who is assigned to  
9 CIMC.

10 Q. OK. And sitting here today as that officer, would you  
11 recommend that Mr. Michael be fired from the CIA?

12 A. I --

13 Q. Would you recommend? I'm just asking what you would  
14 recommend.

15 A. No, personally I would not at this time.

16 Q. You would not at this time, right?

17 A. Yes.

18 Q. You'd wait until the trial was over, correct?

19 A. I --

20 MS. SHROFF: It's OK. I'll withdraw that one. Thank  
21 you.

22 THE COURT: Mr. Denton.

23 REDIRECT EXAMINATION

24 BY MR. DENTON:

25 Q. Sir, could you answer Ms. Shroff's question: What impact

K2rWsch2

Hall - Redirect

1 does the trial have on your recommendation there?

2 A. None.

3 MR. DENTON: Could we put up the memo just briefly.

4 Q. Ms. Shroff asked you a series of questions about your  
5 communications with the Department of Justice. Do you remember  
6 that?

7 A. Yes.

8 Q. Did anyone from the Department of Justice ask you to place  
9 Michael on administrative leave?

10 A. No.

11 MR. DENTON: Now, if we could just blow up paragraph  
12 2, Ms. Hurst.

13 Q. We talked about this before, where it refers to Michael's  
14 past activities with the primary person of interest in the FBI  
15 investigation. Do you see that?

16 A. Yes.

17 Q. Again, who does that refer to?

18 A. Mr. Schulte.

19 Q. Is anything at all in this memo intended to convey that  
20 Michael, and not Mr. Schulte, is responsible for the Vault 7  
21 theft?

22 A. No.

23 Q. When Ms. Shroff was asking you questions, she used the term  
24 "reversion." Do you remember that?

25 A. Yes.

K2rWsch2

Hall - Redirect

1 Q. Have you heard that term in connection with this  
2 investigation before?

3 A. I believe I have.

4 Q. Generally, what's your understanding of what it refers to?

5 A. Means that something looks as though it did in the past.

6 Q. What is your understanding of who executed the reversion  
7 involved in this case?

8 A. Mr. Schulte.

9 MR. DENTON: No further questions, your Honor.

10 THE COURT: You're excused, Mr. Hall.

11 THE WITNESS: Thank you.

12 THE COURT: Thank you very much.

13 (Witness excused)

14 THE COURT: Mr. Laroche.

15 MR. LAROCHE: The government rests, your Honor.

16 THE COURT: All right. The government has rested.

17 There are no more witnesses.

18 We have a lot of work to do. The parties want to work  
19 on their summations. I want to work on the jury charge. So  
20 we're not going to meet tomorrow. We'll meet again on Monday  
21 and we'll have the summations to the jury, I'll give you my  
22 instructions and then you can begin deliberations.

23 Remember my standard instructions. Until  
24 deliberations begin, don't discuss the case with anybody.  
25 Don't do any independent research. If there are any stories in

K2rWsch2

Hall - Redirect

1 the newspaper or on TV or radio, please ignore them. Keep open  
2 minds. You'll start your deliberations on Monday.

3 I hope you have a nice weekend.

4 Ms. Wiker, I hope your leg gets better.

5 (Continued on next page)

K2rWsch2

1 (Jury not present)

2 THE COURT: Please be seated.

3 We sent around the jury charge last night. Everybody  
4 got it, didn't they?

5 MR. LAROCHE: Yes, your Honor.

6 THE COURT: When do you want to get together?

7 MR. DENTON: Could we say 3:00, your Honor?

8 THE COURT: How long do you think it's going to take?

9 MR. DENTON: I'm hopeful, after talking with Mr. Zas,  
10 that we may actually be able to get together on a couple of  
11 things, so hopefully not all that long.

12 THE COURT: David, what do we have this afternoon?

13 THE DEPUTY CLERK: We're clear until four, your Honor.

14 THE COURT: Do you think we could start at 2:30?

15 MR. ZAS: Fine with us.

16 MR. DENTON: Fine, your Honor.

17 THE COURT: We'll start at 2:30.

18 MR. ZAS: I have one application, very quickly.

19 We just want to renew our Rule 29 motion in light of  
20 all the evidence.

21 THE COURT: I'll reserve decision.

22 How long do you think the summations are going to be?

23 MR. LAROCHE: Your Honor, I'm going to try to stay  
24 around two to two and a half hours for the government.

25 THE COURT: Does that include rebuttal?



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1 MR. LAROCHE: No, your Honor. I think rebuttal we  
2 would request about 30 minutes.

3 THE COURT: Ms. Shroff.

4 MS. SHROFF: I don't know. Two hours seems like a  
5 lot, but I don't think I'm going to go more than 45 minutes to  
6 an hour.

7 THE COURT: All right.

8 MS. SHROFF: I promise to go half the time that Mr.  
9 Laroche does. No matter what he does, I'm going to cut it in  
10 half.

11 THE COURT: Well, OK. I was hoping that we would do  
12 summations on Monday. It would be two hours for the  
13 government, two hours for the defense, two hours for the jury  
14 charge. I timed out the jury charge last night. I'm at two  
15 hours.

16 MS. SHROFF: OK.

17 THE COURT: But I don't want to cut anybody off.  
18 You've got important things to say.

19 MR. LAROCHE: Your Honor, I will try to keep it as  
20 short as possible. I think what we request is two hours for my  
21 summation and 30 minutes, if we could, for rebuttal.

22 THE COURT: All right.

23 MS. SHROFF: Your Honor, are you going to tell  
24 Mr. Kamaraju to only rebut, not to -- I'm just kidding.

25 MR. KAMARAJU: I'll take any advice your Honor has on

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1 rebuttal.

2 THE COURT: I received a letter yesterday from  
3 Mr. Schulte. I'm going to mark that as a court exhibit.

4 OK. See you at 2:30.

5 (Luncheon recess)

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1 AFTERNOON SESSION

2 2:30 p.m.

3 THE COURT: Good afternoon. Please be seated.

4 OK. Where do you want to start? What page?

5 MR. ZAS: Your Honor, my first comment is on page 5.

6 THE COURT: OK.

7 MR. ZAS: On the first full paragraph at the top, the  
8 last line is about "sympathy should play no role," and I think  
9 you'd already said that on page 4, just before. "Do not be  
10 swayed by sympathy." I don't think it needs to be said twice.

11 THE COURT: Where do I say it on page 4, Mr. Zas? Oh,  
12 "do not be swayed by sympathy." OK.

13 MR. ZAS: Right.

14 THE COURT: You want to strike that, I gather.

15 MR. ZAS: Just one.

16 THE COURT: We don't need repeated references.

17 OK. Next.

18 MR. ZAS: On page 7, just the last sentence on seven,  
19 that says, "You are to give no weight to the fact that a grand  
20 jury properly returned an indictment." We would just object to  
21 that as being unnecessary. That seems to imply that the  
22 Court's saying that the grand jury acted properly in the sense  
23 of what basis, so I thought we'd just strike that sentence.

24 THE COURT: Any objection, Mr. Denton?

25 MR. ZAS: Or if you want to say "give no weight to the

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1 fact that the grand jury returned an indictment," that would  
2 solve our concern.

3 MR. DENTON: Seems easier just to strike the sentence,  
4 your Honor.

5 THE COURT: I'll strike the sentence then.

6 OK.

7 MR. ZAS: Your Honor, Mr. Branden reminds me, on the  
8 same page we're on, page 7, the first full paragraph, at the  
9 top, again, there's another sympathy reference. In the second  
10 sentence, "It is not an excuse to avoid the performance of an  
11 unpleasant duty," we would just strike the "and it is not  
12 sympathy."

13 THE COURT: This is a pretty standard charge.

14 MR. ZAS: Oh, it's just that I thought it's  
15 repetitive.

16 THE COURT: OK. I'm going to leave this the way it  
17 is.

18 MR. ZAS: OK.

19 My next comment is on page 13.

20 THE COURT: Anything before 13, Mr. Denton?

21 MR. DENTON: No, your Honor.

22 THE COURT: OK. Mr. Zas, what do you have?

23 MR. ZAS: The last full paragraph, the sentence that  
24 talks about the pseudonyms, the potential danger to the  
25 witnesses' safety.

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1 THE COURT: Yes.

2 MR. ZAS: We would just object to that in a case where  
3 the jury has to determine whether this was national security  
4 information, we thought it's unnecessary, and we would propose  
5 the following change:

6 "The disclosure of the witnesses' true names and what  
7 they look like could potentially," and then just strike  
8 everything up to compromise -- "could potentially compromise  
9 their work at the CIA," rather than flagging the potential  
10 safety issues.

11 THE COURT: Mr. Denton.

12 MR. DENTON: I don't grasp the implications about what  
13 it means to compromise their work at the CIA, your Honor. I  
14 think that's probably fine to strike. I think as long as the  
15 jury has some explanation and doesn't think it's without basis,  
16 I think that's fine.

17 THE COURT: OK. I'll make the change.

18 MR. ZAS: On page 14, discussion of expert witnesses.

19 THE COURT: Yes.

20 MR. DENTON: Just before that, if I may, your Honor?

21 THE COURT: Mr. Denton.

22 MR. DENTON: I think with respect to a separate  
23 instruction on bias and hostility, in your Honor's instruction  
24 on witness credibility and in the last full paragraph on page  
25 10, you already talk about how the jury can consider whether a

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1 witness had any possible bias or relationship and that these  
2 are factors that you may consider. So I don't think we think a  
3 separate instruction is necessary there.

4 MR. ZAS: I think the difference seems to be this one  
5 seems specifically aimed at any anger or resentment toward the  
6 defendant, so we like that. I don't think we care -- it could  
7 be incorporated into the other one or it could be standing  
8 alone, but I think that's an additional point worth making.

9 THE COURT: Where is the reference to bias on page 10?

10 MR. DENTON: Your Honor, I think it's the last full  
11 paragraph on the page. It starts, "In addition, you may  
12 consider whether a witness had any possible bias or  
13 relationship with a party."

14 THE COURT: OK. I'll integrate the language on page  
15 14 with that clause on page 10.

16 OK. We're up to expert witnesses, on page 14.

17 MR. ZAS: Yes. We have no problem up until, there's a  
18 point in the middle of the instruction that sort of starts to  
19 summarize what the expertise was about, and we just think  
20 that's unnecessary. In a way, it's incomplete. It doesn't  
21 really cover everything they said, and they don't need it.  
22 Once they know that there -- I think it's three or four  
23 individuals, that should suffice rather than having the Court  
24 do a summary.

25 THE COURT: I'm not trying to do a summary; I'm just

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1 trying to identify what the expertise is, more than just the  
2 name.

3 MR. ZAS: Yes, we're fine up to, you identify in this  
4 draft charge "the specialized areas were WikiLeaks, the system  
5 of classifying national security materials, and the forensic  
6 analysis of computers and other electronic devices." And we  
7 would just end the paragraph there.

8 THE COURT: OK. Before we come to that, who are the  
9 experts? Can we agree on who the experts are? I have  
10 Rosenzweig, Leedom, Berger and Bradley.

11 MR. DENTON: That's what I have.

12 MR. BRANDEN: That's correct, Judge.

13 MR. ZAS: Yes, that's right.

14 THE COURT: And you want to end it in the middle of  
15 the paragraph, right, Mr. Zas?

16 MR. ZAS: Yes, after the words "electronic devices."

17 MR. BRANDEN: The end of the third sentence before  
18 "the expert witnesses."

19 THE COURT: Mr. Denton.

20 MR. DENTON: I think that's fine, your Honor. If  
21 people are confused about the system of classifying national  
22 security materials at this point, there's not much hope.

23 THE COURT: OK. So I strike out, "The expert  
24 witnesses were allowed to testify," and that goes over --

25 MR. BRANDEN: To the end of the paragraph.

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1 MR. ZAS: Yes.

2 THE COURT: That ends on page 15, correct?

3 MR. ZAS: Yes.

4 MR. DENTON: Yes, your Honor.

5 THE COURT: All right. Anything else on 15?

6 MR. ZAS: No.

7 THE COURT: Do I have the name right on 15, Carlos  
8 Betances?

9 MR. DENTON: I think that is probably the best way to  
10 refer to him. His full name is Carlos Betances Luna Mera, but  
11 I think since he was referred to by everyone as Mr. Betances,  
12 it's probably best to just call him that.

13 THE COURT: OK.

14 Pages 16 and 17.

15 MR. ZAS: On 17, I think we would object to the  
16 instruction, letter K, "evidence obtained from searches."

17 THE COURT: Yes.

18 MR. ZAS: I'm not sure there's been any argument that  
19 there's an illegal search that occurred in the case, so if I'm  
20 right about that, I thought it would be unnecessary to put in.

21 THE COURT: Well, this is really just based on my  
22 experience, which is I once had a note from a juror saying they  
23 weren't sure about the evidence that had been obtained from the  
24 searches, so since that time I've included it. It's a standard  
25 charge.



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1 It's up to you, Mr. Denton. Do you want it in or out?

2 MR. DENTON: I think we should keep it, your Honor.

3 THE COURT: Yes.

4 Mr. Zas, I'm not going to make that change.

5 MR. ZAS: Understood, your Honor.

6 THE COURT: What are we up to now?

7 MR. ZAS: On page 19, the heading O, "all available  
8 evidence need not be introduced."

9 THE COURT: OK.

10 MR. ZAS: I just object to that whole thing as  
11 unnecessary. I don't think anyone thinks that either side has  
12 to call or present all the evidence that might exist.

13 THE COURT: Mr. Denton.

14 MR. DENTON: Your Honor, I think that's a pretty  
15 standard instruction.

16 THE COURT: It is standard. Is it necessary, though?

17 MR. DENTON: We think it's appropriate here, your  
18 Honor. I think there's been sort of a question about who  
19 introduced what. I think it's fair to inform the jury that  
20 that's not a criterion for them to evaluate the case on.

21 THE COURT: All right. I'll leave it in. It's a  
22 standard charge.

23 Just above that, on stipulations, do you want to give  
24 them exhibit numbers?

25 MR. DENTON: Yes. I think they are Government

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1 Exhibits 3002, 3003, 3004, 3005 and Defense Exhibit O.

2 THE COURT: 3002, '3, '4, '5 and Defense Exhibit O.  
3 Are you sure we have them all?

4 MR. DENTON: I'm pretty sure, your Honor.

5 MR. ZAS: Those are the testimonial stipulations or  
6 the facts.

7 MR. DENTON: O is a fact stipulation. And '2, '3, and  
8 '4 are testimonial.

9 THE COURT: Why don't you go back to your offices and  
10 check. I want to make sure this is complete.

11 MR. DENTON: OK. I know we omitted 3001.

12 THE COURT: Inferences.

13 MR. ZAS: Your Honor, we think that's all covered by  
14 your direct and circumstantial evidence charge. It's basically  
15 repeating the same point.

16 THE COURT: You say that circumstantial evidence and  
17 inferences are the same, Mr. Zas?

18 MR. ZAS: Let me just go back and see how close they  
19 are.

20 On your pages 8 and 9, in the direct and  
21 circumstantial evidence instruction, you talk about what an  
22 inference is and how they should be made.

23 THE COURT: OK. If there's anything critical in  
24 inferences, I'll move it back and include it in direct and  
25 circumstantial evidence.

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1 MR. DENTON: I think on that point, your Honor, the  
2 main thing that we would ask that you keep is the confirmation  
3 that "an inference is not a suspicion or a guess"; essentially,  
4 the second paragraph of that instruction.

5 THE COURT: OK.

6 MR. BRANDEN: In the fourth paragraph of that  
7 instruction, it says "the defendants," plural. I know it's a  
8 small, technical point, but it should be singular.

9 THE COURT: The defendant. OK.

10 The takeaway here is I'm going to consolidate letter  
11 P, inferences, at page 20, with the language on page 8 dealing  
12 with direct and circumstantial evidence. The government wants  
13 to include that an inference is not a suspicion or a guess and  
14 the rest of the language in that paragraph.

15 Motive.

16 MR. ZAS: We just have a small change. In the very  
17 last sentence of that instruction, "But the presence or absence  
18 of motive is a circumstance that you may consider as bearing on  
19 the intent of the defendant," we would just insert "or  
20 actions," intent or actions of the defendant.

21 THE COURT: All right.

22 I think on "defendant's testimony," this is the  
23 language you suggested last night, Mr. Zas.

24 MR. ZAS: Yes. We have no objection to it.

25 THE COURT: Mr. Denton.

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1 MR. DENTON: Your Honor, I think as a general matter  
2 we're fine with it. I think the main thing we would object to  
3 is the language at the top of page 22 suggesting reasons why a  
4 defendant may decide not to testify.

5 I think it's sufficient to instruct the jury to not  
6 speculate as to why he did not testify and to instruct them  
7 that they cannot draw any inference, without suggesting a  
8 number of innocent reasons. We would propose deleting from  
9 "there are many reasons" through "you are not to speculate as  
10 to these things."

11 MR. BRANDEN: I haven't looked recently, but I believe  
12 that those explanations for why a defendant may not testify are  
13 part of a standard Sand instruction. I know I've requested  
14 that previously.

15 MR. ZAS: I think there is authority for it that I  
16 think we gave to the Court when we proposed it.

17 MR. DENTON: It is equally true that a defendant may  
18 decide not to testify because he is concerned about the outcome  
19 of cross-examination, so I think the more prudent course is  
20 simply not to invite speculation either way, which is what your  
21 Honor did in *Flores*, so we'd just suggest leaving it out  
22 entirely.

23 THE COURT: OK. We're resuming on the final  
24 paragraph, "You are not to attach any significance to the fact  
25 that Mr. Schulte did not testify"?

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1 MR. DENTON: That's fine, your Honor. We would also  
2 have no objection to leaving in the last sentence and just  
3 reiterating again that "you may not draw any inference  
4 whatsoever from a defendant's decision not to take the stand."

5 THE COURT: OK. The summary of the indictment.

6 MR. DENTON: If I may, your Honor?

7 Just before we move on to substantive instructions, we  
8 had requested an instruction, I think it was government's  
9 request No. 4, pertaining to false exculpatory statements by  
10 the defendant. We think in light of the testimony,  
11 particularly from Special Agent Evanchec, about his interviews  
12 with the defendant, I think it's appropriate to give that  
13 instruction here.

14 THE COURT: Mr. Zas.

15 MR. ZAS: Your Honor, if I may?

16 On this one, I don't have the government's proposed  
17 instruction in front of me. Could we put this to the side, and  
18 if I have a view, either let you know in writing later today or  
19 tomorrow morning.

20 THE COURT: That would be fine.

21 The summary of the indictment.

22 MR. ZAS: Yes. I have something on 26 too.

23 MR. DENTON: I think we're all good until the third  
24 element of Count One, your Honor.

25 THE COURT: Let me ask you about what appears on page

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24:

"First, that in or about 2016, the defendant copied, took, made, or obtained a sketch, photograph, photographic negative, blueprint, map model, instrument, appliance, document, writing, or note, to wit"; just saying "the defendant took information maintained by an intelligence agency of the United States."

MR. BRANDEN: I'm sorry, Judge. I'm not sure I understood. Are you proposing to take out the sort of statutory language?

THE COURT: Yes.

MR. BRANDEN: And just get into the "to wit" part.

THE COURT: Correct.

MR. ZAS: I think I attempted to deal with it when we did our proposed instructions. It seemed to me that what was really being alleged is a document, writing, or note in the sense that it's a kind of file.

THE COURT: Well, I don't mind reducing it. I just don't think we need all this photograph, photographic negative, blueprint, map, model, instrument, appliance, document. If you want to say exactly what it was, I don't mind putting in the allegations.

MR. ZAS: That's what I was trying to say. If we took out the first, you know, sketch, photograph, photographic negative, blueprint, map, model, instrument, appliance, all

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1 unnecessary. I would keep "document, writing, or note, to wit,  
2 the defendant took" -- I'm not sure information's the right  
3 word because I think the statute distinguishes between  
4 information and tangible things like documents.

5 Files, does that cover it? Or a file? Something like  
6 that.

7 MR. DENTON: The way it is charged in the indictment  
8 is exactly how it reads.

9 THE COURT: It's charged in the indictment using the  
10 language of the statute.

11 MR. DENTON: I wouldn't have a problem just going  
12 straight to the "to wit" clause, which is also from the  
13 indictment.

14 THE COURT: What about that, Mr. Zas?

15 MR. ZAS: I think we want, I think the statutory  
16 language that was charged, I think it speaks of document,  
17 writing, or note and maybe "or information," so I think we'd  
18 like to leave that.

19 THE COURT: I can say, "The defendant copied a  
20 document, writing, or note or took information maintained by an  
21 intelligence agency of the United States."

22 MR. ZAS: I think so.

23 MR. DENTON: I think that's fine, your Honor.

24 THE COURT: OK. And then in D, "Count One: First  
25 element -- taking information," I'd make the same change there.

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1 MR. ZAS: Yes.

2 THE COURT: Now, somebody was up to the second element  
3 or the third element.

4 Mr. Zas.

5 MR. ZAS: I was up to the third element, on page 26.

6 THE COURT: Do you have anything on page 25,  
7 Mr. Denton?

8 MR. DENTON: No, your Honor.

9 MR. ZAS: Just on the last sentence of the last full  
10 paragraph on 26.

11 THE COURT: "I emphasize that for Count One"?

12 MR. ZAS: Yes. Just to make it a little more precise,  
13 I'll just read to you the way I fix it:

14 "I emphasize that to convict the defendant of Count  
15 One, you must find that the defendant had the intent that the  
16 information would be used against the United States, not just  
17 that it could be used. So I'd just clarify that it's not  
18 really whether or not; it's to convict, they have to find that  
19 he had the intent that it would.

20 THE COURT: Give me the language again, Mr. Zas.

21 MR. ZAS: "I emphasize that to convict the defendant  
22 of Count One, you must find that the defendant," and then  
23 everything stays the same after that.

24 THE COURT: "I emphasize that to convict the defendant  
25 of Count One, you must find that the defendant had the intent



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1 that the information would be used against the United States,  
2 not just that it could be used."

3 MR. ZAS: Exactly right.

4 THE COURT: Mr. Denton.

5 MR. DENTON: I have no objection to Mr. Zas's  
6 revisions to the start of the sentence. I think the only thing  
7 we would ask, your Honor, is that where it continues, where you  
8 say that the defendant had the intent, it should be "had the  
9 intent or reason to believe."

10 THE COURT: All right. Is that from the statute?

11 MR. DENTON: Yes, your Honor.

12 THE COURT: All right:

13 MR. DENTON: I'll just note, this is purely a semantic  
14 thing, your Honor, there's a couple of different formulations  
15 in this instruction in which we talk about sort of information  
16 being used "to the injury of the United States," "to injure the  
17 United States," or "against the United States." I realize that  
18 it is probably quite stilted to say over and over again "to the  
19 injury of the United States." I only flag it just to the  
20 extent the inconsistency causes any concern.

21 THE COURT: Does it cause you any concern?

22 MR. DENTON: It causes me a slight concern, but not  
23 enough that if it doesn't cause your Honor concern I'm not  
24 going to --

25 THE COURT: Mr. Zas.

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1 MR. ZAS: We're OK with it.

2 THE COURT: OK. I'll leave it the way it is.

3 OK. What are we up to now? Count Two?

4 MR. ZAS: I have nothing until 35.

5 THE COURT: Let me ask you a question on Count Two and  
6 Count Three, where you talk about lawful possession, page 30.

7 MR. BRANDEN: Are you talking paragraph H, Judge?  
8 That might help me. My pagination is slightly different from  
9 yours. I don't know why, but I'm trying to follow along.

10 THE COURT: I'm at paragraph G on page 27 of the draft  
11 I sent out last night.

12 MR. BRANDEN: OK. I'm with you.

13 THE COURT: Count Two talks about "lawfully  
14 possessed," and Count Three is "unauthorized possession."  
15 That's at paragraph L, on page 30.

16 I guess the question I have is, are these  
17 inconsistent, lawfully possessing and unauthorized possession;  
18 if you have to select one or the other. How do you convict on  
19 both? Or acquit on both?

20 MR. DENTON: I think, your Honor, in terms of the  
21 theory of convicting on both, what I expect we will argue is  
22 that what the defendant stole was the entirety of the  
23 information in Confluence and Stash; that there were portions  
24 of that -- that there were projects he was assigned to, for  
25 example -- to which he had lawful access. But there were other

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1 portions that he was not entitled to, to which he had unlawful  
2 access. So by stealing the entirety of it, he covered both  
3 what he was allowed to have and everything else as well.

4 THE COURT: Under your theory, Mr. Denton, this  
5 language is perfectly fine?

6 MR. DENTON: Yes, your Honor.

7 THE COURT: All right.

8 MS. SHROFF: Your Honor, could we just have a minute?

9 THE COURT: Yes.

10 MR. ZAS: Your Honor's point was so good that we're  
11 confused ourselves now. And I'm concerned the jury may be  
12 confused because it seems, just on its face, without  
13 clarification, that they are inconsistent. Maybe this is  
14 another area we could do a little research and see if we can  
15 find something.

16 THE COURT: All right.

17 MR. DENTON: I'll just say, your Honor, to the extent  
18 that something is necessary to clarify, I think the way to do  
19 it may be to talk about the term of the statute. The  
20 provisions of 793(d) and (e) speak in terms of the information,  
21 not the system or the data or anything like that. And so  
22 whether he obtained the information lawfully or unlawfully is  
23 the subject of the computer counts. His access to the  
24 information is what the espionage counts deal with, and that's  
25 a slightly different issue.

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1 MS. SHROFF: Isn't the government going to argue he  
2 had no access, he had no lawful access?

3 MR. DENTON: He did not have lawful access to the  
4 system. He had lawful access to the information through a  
5 different system.

6 MS. SHROFF: That's not what they've argued. They  
7 said he had no lawful access to any information. Whatever  
8 access he had was misgranted to himself. That's what their  
9 argument is, which is why I'm confused by what he's saying.  
10 But maybe Mr. Zas could think about it and let the Court know.

11 MR. DENTON: The point is that he was still a CIA  
12 employee. He still had access lawfully to some amount of  
13 information, just not the whole corpus that he stole.

14 MS. SHROFF: But not according to them. According to  
15 them, they moved him to AED. They moved him to another  
16 division.

17 Mr. Denton, you don't have to yell at me. I'm just  
18 trying to think about it.

19 THE COURT: Mr. Denton, in your view, what did he have  
20 lawful access to? Altabackups?

21 MR. DENTON: No. He had lawful access to the projects  
22 from RDB, to which he was assigned at the time he committed the  
23 theft.

24 THE COURT: I think I'm going to take up Mr. Zas's  
25 suggestion, and maybe we can meet again Friday or you can

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1 submit further information on Friday, Friday being tomorrow.

2 MR. ZAS: Yes.

3 THE COURT: What's your next comment, Mr. Denton?  
4 What page are you up to?

5 MR. DENTON: I'm on page 30.

6 THE COURT: Anything before 30, Mr. Zas?

7 MR. ZAS: No, your Honor.

8 THE COURT: OK. Mr. Denton, what do you have on 30?

9 MR. DENTON: Just at the paragraph that carries over  
10 from 29 to 30 regarding the definition of an act being done  
11 willfully. We would just ask that the Court include the  
12 standard language from *Bryan*, that "it is not necessary for the  
13 government to establish that the defendant was aware of the  
14 specific law or rule that his conduct may be violating."

15 THE COURT: What language do you want inserted?

16 MR. DENTON: It is from request 41 of our original  
17 proposed instructions, and it is simply, "However, in  
18 determining whether a defendant has acted willfully, it is not  
19 necessary for the government to establish that the defendant  
20 was aware of the specific law or rule that his conduct may be  
21 violating."

22 THE COURT: All right.

23 What are you up to, Mr. Zas?

24 MR. ZAS: On page 35 --

25 THE COURT: Anything before 35, Mr. Denton?

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1 MR. DENTON: Just a stylistic point, your Honor.

2 On Count Three, the fourth element, on page 32,  
3 regarding transmission of the information --

4 THE COURT: Yes.

5 MR. DENTON: -- for all three of the preceding  
6 instructions, you simply direct the jury to your instructions  
7 on Count Two, but this instruction you repeat in full. We  
8 don't have a problem with the Court repeating it. Just  
9 flagging that, in the interest of time, you might also here be  
10 able to simply say that you've instructed them previously on  
11 this and they should follow those instructions here as well.

12 THE COURT: I think we threw this in for emphasis --  
13 not for emphasis, but rather, it doesn't hurt to repeat every  
14 once in a while. I'll take a look at it again with your  
15 suggestion in mind.

16 Page 35.

17 MR. ZAS: This is the count, I think, that actually  
18 alleges both a substantive crime and the attempt to transmit  
19 information from MCC.

20 THE COURT: Right.

21 MR. ZAS: Mr. Denton and I discussed this. I think  
22 we're in agreement that since intent is being charged, the  
23 Court should give the normal instruction on what intent  
24 requires. I think Mr. Denton has one from the government that  
25 I've reviewed that's fine, very close to the Sand charge,

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1 essentially saying there has to be a substantial step toward  
2 the commission, but that mere intent or in preparation may not  
3 suffice, something like that.

4 THE COURT: OK.

5 Do you have a number on your request?

6 MR. DENTON: It was request No. 42, your Honor.

7 THE COURT: 42. I'll include that.

8 I'm up to Count Five. I have a question. It's kind  
9 of like the question I had for Counts Two and Three. The  
10 indictment here says "knowingly accessed a computer without  
11 authorization and exceeded authorized access." How do we  
12 explain that to the jury?

13 MR. DENTON: I think, your Honor, like anything that's  
14 charged in the alternative, I think the best course is for the  
15 Court to just explain both to them.

16 THE COURT: You don't have to pick?

17 MR. DENTON: No, your Honor.

18 THE COURT: Mr. Zas.

19 MR. ZAS: I don't think that the Court has to pick,  
20 but I just was looking to see, does the Court explain the  
21 difference between accessing a computer without authorization  
22 and accessing a computer in excess of authorization? I think  
23 that would be useful if you're going to say both. My  
24 understanding is a defendant accesses without authorization if  
25 the defendant's not permitted to be on the device at all, but

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1 that if the defendant is permitted to be on a device or certain  
2 portions of a device that goes to other places, that would be  
3 exceeding authorization.

4 I'm not sure if the Court makes that point, but I  
5 think it might be helpful if the Court's going to keep both.

6 THE COURT: I don't think I've made that point. I  
7 haven't made it yet, anyway.

8 MR. ZAS: I know there are charges out there that do  
9 make that point explicitly, so I can add that to my list.

10 THE COURT: All right.

11 MR. DENTON: I don't think we have any problem with  
12 the clarification Mr. Zas is talking about, but, your Honor, I  
13 do think, given that the indictment charges it in the  
14 alternative, it's appropriate to instruct the jury on both  
15 options.

16 THE COURT: OK.

17 Next. Mr. Denton, what do you have?

18 MR. DENTON: I'll just say, your Honor, I think that  
19 to the extent that you make that change and sort of discuss it  
20 in the alternative, that may just require a few additional  
21 tweaks to other places in Count Five stylistically.

22 THE COURT: OK.

23 MR. DENTON: But I don't have anything else  
24 substantively until page 39.

25 THE COURT: Mr. Zas, anything before page 39?



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1 MR. ZAS: No. I also have something on 39, though.

2 THE COURT: Why don't you go first.

3 MR. ZAS: On page really 38 to 39, I think this is the  
4 only place in the instruction that has a conscious avoidance  
5 charge.

6 THE COURT: Yes.

7 MR. ZAS: And we would object to this. I don't think  
8 the government laid a sufficient predicate for conscious  
9 avoidance in this case. I don't recall any evidence of  
10 Mr. Schulte deliberately closing his eyes to whether he had  
11 access or exceeded access. It seems to me that either you  
12 accept that he was given lots of instructions and didn't have  
13 access or that he didn't receive such instructions, but I don't  
14 recall any evidence that he was deliberately closing his eyes  
15 to whether he had access. He seemed to be writing a lot of  
16 memos on this subject, so it didn't seem like it was  
17 deliberate.

18 THE COURT: Mr. Denton.

19 MR. DENTON: Your Honor, Mr. Schulte's own narrative  
20 was that he was not told but simply discovered that he had been  
21 barred from access and chose to enable it. We think it is fair  
22 to say that he chose not to discover why he had been barred,  
23 the fact that he had been barred. We think that's an  
24 appropriate basis for a conscious avoidance instruction if the  
25 defense version of what he did is credited.

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1 MR. ZAS: Not being told is not being told. Being  
2 told over and over again is knowing. But I don't see the  
3 middle area, which is, for example, he got this important  
4 letter, open it right away, and decided never to open it. That  
5 would be a conscious avoidance situation. This just seems  
6 black and white.

7 THE COURT: Black and white in what sense?

8 MR. ZAS: In the sense that it's either knowledge or  
9 no knowledge, but not deliberately deciding not to acquire  
10 knowledge. It's not like he didn't open these emails or he put  
11 fingers in his ears or something.

12 MS. SHROFF: He read the email and thought it was not  
13 clear.

14 THE COURT: All right.

15 What's next?

16 MR. ZAS: Your Honor, can I just raise a general  
17 concern that I just caught?

18 Some of the counts don't specify a time period here --  
19 they do in the indictment, of course, but they don't here --  
20 and some do. It might just be clearer for the jury if there  
21 was just a reference on "in or about." I think it's usually in  
22 or about a month or year that's charged. That might help the  
23 jury not get confused between which time periods.

24 THE COURT: I do that the first time we mention each  
25 of the separate counts.

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1 MR. ZAS: OK. I saw some that didn't have it.

2 THE COURT: OK. That's a good stylistic suggestion,  
3 so I'll do that.

4 What are you up to now, Mr. Zas?

5 MR. ZAS: I think I'm done.

6 THE COURT: You're done?

7 MR. ZAS: I think so.

8 MR. DENTON: My next was on page 50, your Honor.

9 "Count Nine, second element -- materiality," and this is not  
10 something I feel strongly about.

11 In the last sentence of the instruction, your Honor  
12 says "proof of actual reliance on the statement by the  
13 government is not required." That is a totally correct  
14 instruction. I just wondered whether it might be better to use  
15 the somewhat more plain-language version that just says, "It is  
16 not necessary for the government to prove that the government  
17 agency was, in fact, misled as a result of the defendant's  
18 actions" rather than introducing the concept of actual  
19 reliance.

20 Maybe I spent too long in securities work.

21 THE COURT: What's your language again? It's longer,  
22 which is going in the wrong direction.

23 MS. SHROFF: It's too long.

24 THE COURT: Your objection, Ms. Shroff, is it's too  
25 long?

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1 MS. SHROFF: Yes. This sentence is nice and short.

2 THE COURT: What is it again, Mr. Denton?

3 MR. DENTON: "It is not necessary for the government  
4 to prove that the government agency was, in fact, misled as a  
5 result of the defendant's action."

6 THE COURT: OK. I'll consider that.

7 What page are we up to?

8 MR. DENTON: My next is on page 52, your Honor.

9 THE COURT: OK.

10 MR. DENTON: Count Ten, first element.

11 THE COURT: Yes.

12 MR. DENTON: Your Honor, I think here it would be  
13 appropriate to include the portion from the Sand instruction  
14 that advises that a grand jury proceeding commences once  
15 subpoenas have been issued in furtherance of the grand jury  
16 investigation.

17 THE COURT: What's the evidence of that in the record?

18 MR. DENTON: I think that Special Agent Evanchec  
19 testified about giving the defendant a subpoena for his phone  
20 when they first met with him.

21 MS. SHROFF: That's not testimonial.

22 MR. DENTON: He testified that he --

23 MS. SHROFF: But you could get a grand jury subpoena  
24 for a phone regardless of whether or not there's an  
25 investigation open on you; it has to be an investigation of

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1 Mr. Schulte.

2 MR. DENTON: No, it doesn't.

3 THE COURT: No. I think the investigation has to have  
4 been started. Proof that the grand jury has issued a subpoena  
5 is enough for the start. It doesn't have to have a target.

6 But I have a question here. What are the allegedly  
7 false statements? Should we tell the jury what the allegedly  
8 false statements are?

9 MS. SHROFF: Actually, we don't know what the false  
10 statements are.

11 MR. BRANDEN: I would leave it unstated for that  
12 reason.

13 MS. SHROFF: No, no, no, no, no.

14 MR. ZAS: I thought, to weigh in on the confusion, I  
15 think the government gave us a bill of particulars where we  
16 asked for the false statements. That may be the best place to  
17 find out what they are.

18 THE COURT: Do you want a reference to the bill of  
19 particulars? That's my recollection too, that the bill of  
20 particulars does enumerate them.

21 Mr. Denton.

22 MR. DENTON: It does, your Honor. I'm not sure quite  
23 what you're referring in terms of referencing the bill of  
24 particulars. It's fine to quote from it or take it.

25 THE COURT: My recollection of the bill of

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1 particulars, and when you're dealing with Count Ten that  
2 specifies what the acts are, that you --

3 MR. DENTON: Yes, your Honor.

4 I'm sorry. I misunderstood.

5 I think it would be totally fine to take the  
6 provisions of the bill of particulars and incorporate them  
7 here. I only thought, I didn't think we should reference the  
8 bill of particulars separately.

9 THE COURT: Right.

10 MR. DENTON: The only thing I would note there is that  
11 there is one false statement with respect to the subway  
12 incident that was referenced in the bill of particulars but as  
13 to which we sort of decided to forgo the evidence.

14 THE COURT: There's no testimony about that.

15 MR. DENTON: That's right. So we would suggest just  
16 leaving that one out.

17 THE COURT: Right. OK.

18 I'm up to 55, venue.

19 MR. DENTON: I apologize, your Honor. I have one on  
20 53.

21 THE COURT: OK.

22 MR. DENTON: With respect to "acted to obstruct or  
23 impede" and the definition of "corruptly" --

24 THE COURT: Right.

25 MR. DENTON: We think it's necessary to instruct the

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1 jury that the government need not prove that the defendant's  
2 sole or even primary intention was to obstruct justice, so long  
3 as the government proves, beyond a reasonable doubt, that one  
4 of the defendant's intentions was to obstruct justice.

5 THE COURT: Have you got a request on that?

6 MR. DENTON: Yes, your Honor. It's request 75.

7 THE COURT: Request 75. OK.

8 Mr. Zas, how about you? Do you have anything else?

9 MR. ZAS: I don't.

10 THE COURT: Did the parties stipulate on venue? I  
11 know that some of the charges deal with the Eastern District of  
12 Virginia.

13 MR. DENTON: I believe your Honor allocuted the  
14 defendant as to a waiver of venue, I think, at the arraignment  
15 on the indictment that first presented those charges.

16 THE COURT: Do you want to check that, David?

17 Do you remember, Ms. Shroff? I don't know if you were  
18 counsel then.

19 MS. SHROFF: I was counsel then.

20 THE COURT: You were.

21 MS. SHROFF: I was.

22 MR. ZAS: Your Honor, I think the government's request  
23 here is correct.

24 THE DEPUTY CLERK: The defendant waived his venue  
25 rights to Counts One through Seven of the superseding

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1 indictment. The Court accepted the waiver of venue.

2 MS. SHROFF: That's right, your Honor.

3 THE COURT: One through Seven.

4 MR. DENTON: So it's One through Seven.

5 MR. ZAS: It couldn't have been One through Seven  
6 because four is MCC.

7 MS. SHROFF: We did not stipulate to --

8 MR. DENTON: I think the confusion is because the MCC  
9 charges were superseded later, your Honor. So it was, at the  
10 time, Counts One through Seven of the S1 superseder, which  
11 corresponds to One, Two, Three, Five through Eight of the S2  
12 superseder.

13 THE DEPUTY CLERK: That's true.

14 THE COURT: That raises a question. We're going to  
15 send the indictment in to the jury, so we need a clean copy of  
16 the indictment.

17 MR. ZAS: The government gave me a redacted version  
18 that takes out the child pornography counts.

19 THE COURT: Yes.

20 MR. ZAS: It takes off Twelve, Thirteen, whatever.

21 THE COURT: Twelve, Thirteen, and Fourteen.

22 MR. ZAS: Those are gone, so it will be a clean  
23 indictment with nothing else. The Court doesn't have to  
24 renumber any charges.

25 THE COURT: Then what I'd like to do with the venue



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1 provisions is tailor those in One through Eleven the ones on  
2 which he waived venue at the time of his arraignment. All  
3 right?

4 MR. BRANDEN: Yes, Judge.

5 THE COURT: OK. Do we need a verdict sheet? I've  
6 requested that on several occasions now.

7 MR. DENTON: Sorry, your Honor. I think between us we  
8 may have gotten that crossed up.

9 (Counsel conferred)

10 MR. DENTON: Your Honor, I don't think we think  
11 there's any findings they need to make other than guilty or not  
12 guilty, so we can put something together and get it to you this  
13 afternoon.

14 THE COURT: Do you want the order to be guilty, not  
15 guilty or not guilty, guilty.

16 MR. ZAS: I'd prefer not guilty, not guilty side by  
17 side.

18 THE COURT: You're doubling up there, Mr. Zas.

19 MS. SHROFF: In keeping with the presumption, your  
20 Honor, I guess not guilty, guilty.

21 MR. ZAS: Not sure it matters, but sure.

22 THE COURT: Anything else to take up?

23 MR. ZAS: We did give the Court, very late, just  
24 before we started, a proposed charge on the theory of the  
25 defense.

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1 THE COURT: Yes.

2 MR. ZAS: And a proposed charge permitting the jury to  
3 draw an adverse inference from the late disclosure of the  
4 Michael issue.

5 THE COURT: Where would they go? The theory of the  
6 case I don't have any problems with.

7 MR. ZAS: I'm sorry?

8 THE COURT: On the theory of the case, I think you're  
9 entitled to that charge. Where should I put it is the  
10 question.

11 MR. ZAS: Let me ask one of the trial lawyers.

12 Where do we normally put the theory of the defense  
13 charge?

14 (Continued on next page)

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1 THE COURT: With respect to page 41 at the top,  
2 dealing with Count Six, the elements, the value of the property  
3 was greater than \$1,000.

4 How do we describe that to the jury, and how do we  
5 establish the value was \$1,000?

6 MR. DENTON: Your Honor, I think the instruction then  
7 at 42-43 talks about the value of the property.

8 THE COURT: Yes.

9 MR. DENTON: And I think some of the testimony,  
10 particularly from the early CIA witnesses, was that the effect  
11 of the leak was such that millions of dollars' worth of effort  
12 was essentially wasted. So we would intend to rely on that.

13 THE COURT: So it's no specific, it is the embedded  
14 cost of the innovative work that they've done over time?

15 MR. DENTON: That's correct, your Honor.

16 THE COURT: Okay. Count Eight deals with the causing  
17 the transmission of a harmful computer program information code  
18 or command in violation of Title 18, 1030. What is the actual  
19 conduct here that you have reference to?

20 MR. DENTON: Your Honor, in terms of the charged time  
21 frame, I think that encompasses essentially the various  
22 activities that constitutes his unauthorized reinstitution of  
23 access on at least three separate occasions from March through  
24 July of 2016.

25 THE COURT: That's when he lost access?

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1 MR. DENTON: It covers essentially OSB libraries, the  
2 Altabackups and Brutal Kangaroo, your Honor.

3 THE COURT: Do you mind if the charge refers to those  
4 Altabackups and the Brutal Kangaroo charges?

5 MR. DENTON: I think it's probably better, your Honor,  
6 because it speaks in terms of a command, and I think there was  
7 evidence about a variety of commands. The jury can choose to  
8 convict him on basis of a single log deletion.

9 THE COURT: Okay. Mr. Zas, when do you think you'll  
10 get your supplemental request in?

11 MR. ZAS: Would first thing in the morning be okay?

12 THE COURT: That would be fine.

13 MR. ZAS: Thank you.

14 MR. DENTON: With respect to the instructions that  
15 Mr. Zas submitted this afternoon.

16 THE COURT: Yes.

17 MR. DENTON: We object to the adverse inference  
18 instruction.

19 THE COURT: You'll submit something on that?

20 MR. DENTON: We can submit something, but as a general  
21 matter we object to it in any form. We don't think it's  
22 appropriate here.

23 In terms of the theory of the defense charge, in terms  
24 of what they want to say about their theory, I don't really  
25 have a problem -- I'm not entirely familiar with the theory of

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1 the defense charge where the theory is simply the defendant is  
2 not guilty. The more problematic sentence is the last one in  
3 which the proposed charge says: "If the government fails to  
4 disprove these contentions, you must acquit Mr. Schulte."

5 I think the correct formulation is what it always is,  
6 that if the government fails to prove the defendant's guilt  
7 beyond a reasonable doubt, then you must acquit Mr. Schulte.

8 THE COURT: Okay. We'll get the charge out, we'll get  
9 your comments first thing in the morning. We'll turn them  
10 around as quickly as possible. You'll probably have something  
11 by the early afternoon on Friday, and that will be the charge I  
12 intend to give on Monday.

13 MR. ZAS: Great. Thank you.

14 MR. DENTON: Thank you, your Honor.

15 THE COURT: Anything else?

16 MR. DENTON: Not from the government, your Honor.

17 THE COURT: I notice Mr. Schulte is not here today.  
18 He doesn't have to be, but I assume that he was offered the  
19 opportunity of participating?

20 MR. BRANDEN: He was offered the opportunity and  
21 decided not to avail himself of it.

22 THE COURT: All right. Thank you very much.

23 MR. ZAS: Thank you.

24 MR. DENTON: Thank you, your Honor.

25 (Adjourned to March 2, 2020, at 9:00 a.m.)

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